

IN THE  
District Court of the United States,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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THE UNITED STATES OF AMERICA,  
PETITIONER,

vs.

MOTION PICTURE PATENTS COM-  
PANY et al., DEFENDANTS.

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***RECORD---VOLUME I.***

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TESTIMONY OF WITNESSES FOR THE  
PETITIONER.



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UNITED STATES OF AMERICA

v.

MOTION PICTURE PATENTS CO. ET AL.

RECORD—VOLUME I.

TESTIMONY OF WITNESSES FOR THE PETITIONER.

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IN THE  
**District Court of the United States,**  
 FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA, <div style="text-align: right;">Petitioner,</div>	}	No. 889 Sept. Sess., 1912.
<i>v.</i>		
MOTION PICTURE PATENTS Co., and others, <div style="text-align: right;">Defendants.</div>	}	

2

**Decree Appointing Examiner.**

It appearing that the above entitled cause is at issue on the petition and answers and replication heretofore filed,

3

Now, therefore, upon motion of counsel for the petitioner, and by consent of the parties:

It is ordered that Edward Hacker, of the City of Philadelphia, be and he is hereby designated and appointed as Special Examiner, to take and report to the Court the evidence adduced or offered by the petitioner and the defendants respectively, with full authority as such Special Examiner, according to the rules and practice in such case made and provided;

That said Examiner give notice by mail to counsel for the respective parties of his appointment herein, and of the time and place when and where he will attend for the purpose of hearing such testimony as may be adduced; and that notice be given by the respective counsel or solicitors to the opposing counsel or solicitors, or parties by mail, or personally, of the time and place of the examination for such reasonable time as the Examiner may fix or order in each case;

4

That said Examiner may, when necessary or convenient for the respective parties, continue said hearings from



1 time to time, by order made and entered during any regularly appointed or noted hearing had thereunder;

2 That said Examiner may, upon application of any of the parties, hold such hearings, and receive testimony in behalf of any party, at such time and places without the District of Pennsylvania, as he may designate and appoint, by giving special notice to the respective parties or their solicitors, or by order made and entered at any regularly appointed or noted hearings had hereunder. Notice of such time and place of hearing also to be given by the respective counsel, or solicitors, to the opposing counsel or solicitors or parties, as provided by this order;

That said Examiner is hereby given authority to employ such stenographers as the parties may agree upon to assist in the taking of said testimony from time to time as may be necessary;

3 That all testimony adduced pursuant hereto may be taken in the usual manner, under oath; and when completed be reported by said Examiner, together with all and several the proceedings had before him, to this Court, and filed with the Clerk thereof, in accordance with the rules and practice of this Court;

4 That the respective parties may from time to time agree as to the time and place of taking proof outside of the District of Pennsylvania, and may, in case the Examiner herein appointed is unable by reason of illness, or other cause, to attend at the time agreed upon, by such an agreement select an Examiner specially for such examination, whereupon such Examiner so selected shall as to such proof and the taking and reporting thereof have all the authority, powers and duties herein given generally to the said Edward Hacker, Examiner, and the said Examiner shall act as such Examiner outside of said District of Pennsylvania, except where there is an agreement among the parties, as in the cases provided in this paragraph;

That when testimony is taken outside of the District of Pennsylvania, the party so taking testimony shall give the solicitors of the other parties five days' notice of the names and addresses of the witnesses whose testimony is proposed to be taken.

All testimony in this cause on behalf of both petitioner and defendants may be taken hereunder before said Examiner, or any successor to said Examiner, notwith-

standing the fact that it may not be completed prior to 1  
February 1st, 1913.

By the Court,

J. W. THOMPSON,  
Judge.

---

Dated this 7th day of January, 1913.

We assent to the foregoing order.

GEO. R. WILLIS,

FRED R. WILLIAMS,

CALDWELL, MASSLICH & REED,  
Solicitors for certain defendants.

HENRY MELVILLE,

Solicitor for certain defendants.

R. O. MOON,

Attorney for Sigmund Lubin,  
and Sigmund Lubin Mfg. Co.

JOHN C. SWARTLEY,

United States Attorney.

EDWIN P. GROSVENOR,

Special Assistant to the Attorney General.

2

3

4

# 1                      **Notice of First Hearing.**

Philadelphia, Pa., January 8th, 1913.

Hon. Edwin P. Grosvenor,  
 Department of Justice,  
 Washington, D. C.,  
 Attorney for Petitioner, United States.

Messrs. Caldwell, Masslich & Reed,  
 100 Broadway, New York City, and

2    Charles K. Zug, Esq.,  
 1201 Chestnut Street,  
 Philadelphia, Pa.

Attorneys for William Pelzer, General Film Co.,  
 Thomas A. Edison, Inc., Kalem (Inc), Melies  
 Mfg. Co., Pathe Freres, F. I. Dyer, Samuel  
 Long, J. A. Berst and Gaston Melies.

Henry Melville, Esq.,  
 45 Cedar Street,  
 New York City, and

3    Charles Biddle, Esq.,  
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 Attorneys for Essanay Film Mfg. Co., George Kleine,  
 Selig Polyscope Co., George K. Spoor and W. M.  
 Selig.

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 Baltimore, Md.

David J. Myers, Esq.,  
 625 Hale Building,  
 Philadelphia, Pa.,

4                      Attorney for Motion Picture Patents Co., Bio-  
 graph Co., J. J. Kennedy, Henry N. Marvin  
 and Armat Moving Picture Patent Co.

James J. Allen, Esq.,  
 100 Broadway,  
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Attorney for Vitagraph Co. of America, and Al-  
 bert E. Smith.



Hon. R. O. Moon,  
406 Pennsylvania Building,  
Philadelphia, Pa.,  
Attorney for Sigmund Lubin and Lubin Mfg. Co.

1

Gentlemen:

UNITED STATES OF AMERICA,

*v.*

MOTION PICTURE PATENTS CO., *et al.*

2

Notice of hearing for the taking of Petitioner's Evidence.

You are hereby advised that a hearing is set for ten o'clock A. M., on Wednesday, January 15th, 1913, at the United States Post Office Building, New York City, N. Y., for the purpose of taking evidence in this case on behalf of the United States, Petitioner herein, the Examiner being advised by counsel for petitioner that the time and place for the holding of this hearing has been agreed upon among counsel representing the respective parties herein.

3

Not being advised as to just what room will be assigned by the Custodian at which this hearing can be held, counsel are requested to inquire at the office of the United States District Attorney, Post Office Building, New York, on the morning of January 15th, 1913, as to this matter.

Respectfully,

EDWARD HACKER,  
Examiner.

4

1

New York City, January 15, 1913.

Pursuant to notice heretofore given hearings in this case for the purpose of taking evidence on behalf of the petitioner were begun at 10:30 o'clock A. M., on this January 15, 1913, at the Hotel McAlpin, New York City.

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

2

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company;

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies; also appearing for

3

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig;

JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

---

### **Stipulation in Reference to Objections.**

4

It is stipulated that any objection made at any hearing on behalf of any defendant, may be availed of by any co-defendant, and in like manner any testimony offered on behalf of any defendant, may be availed of by any co-defendant.

## Petitioner's Evidence.

1

Thereupon HARRY N. MARVIN, the first witness subpoenaed by Petitioner, of lawful age, duly sworn, deposed :

Direct examination by Mr. GROSVENOR :

Q. Mr. Marvin, what is your business? A. I am Vice-President of the Biograph Company.

Q. What other position, if any, do you have? A. Vice-President of the Motion Picture Patents Company, and President of the Marvin & Casler Company, Canastota, New York.

Q. Who is the President of the Motion Picture Patents Company? A. I am President of it. I beg your pardon, I was Vice-President and I forgot that.

2

Q. What is the business of the Biograph Company? A. It is the production of motion pictures.

Q. How long has that company, or its predecessor company been engaged in business? A. Since 1896.

Q. Have you since this period been an officer and stockholder of the Biograph Company, or its predecessor? A. I have.

Q. How long have you been an officer of the Motion Picture Patents Company? A. Since the organization of the company in December, 1908.

3

Q. And are you a stockholder in that company, that is, the Patents Company? A. There is one share of stock which stands in my name as a qualifying share for directorship.

Q. You are also a Director of the company? A. Yes, I am a Director, but I do not own any stock in that company.

Q. The Marvin & Casler Company, what is the business of that company? A. They are manufacturers of special and experimental machinery.

Q. Projecting machines? A. We have a few machines, projecting machines commercially—we have made some experiments.

4

Q. In 1908, you were the Vice-President of the Biograph Company you say? A. Yes.

Q. And that company was engaged in manufacturing motion picture films, and in selling them through the United States generally, was it not? A. Yes.

Q. What other manufacturers were there in the United States in the year 1908 of motion picture films? A. The Edison Manufacturing Company, Pathe Freres, Vitagraph



1 Company, Kalem Company, The Lubin Company, or rather S. Lubin, of Philadelphia; Essanay Company, Selig Polyscope Company, and I think George Melies made some films.

Q. What companies were in 1908, importing films from abroad? A. The Kleine Optical Company.

Q. That company was owned by George Kleine? A. Yes.

Q. And was located at Chicago? A. Yes, sir. G. Melies, Pathe Freres, Williams, Brown and Earle, and Essanay Company.

2 Q. Is that the Italian company? A. It was called the "Essanay Company." I think it imported under the name of Dressler & Company; a man named Oes represented the Great Northern Company of Europe.

Q. The method of doing business in 1908 was for the manufacturer to distribute his films to middlemen called "Rental Exchanges," and the latter rented the films to the various exhibitors or owners of moving picture theatres, is not that correct? A. That was the usual custom of distribution.

3 Q. What articles besides these films did the rental exchange handle as a general rule? A. I believe they had projecting machines and supplies for them.

Q. Supplies for the projecting machines? A. Yes, carbons and parts.

Q. By far the larger proportion of the business then and now consists in the business of the moving picture films, is that not correct? A. Yes.

Q. And by a moving picture film you mean the long film upon which are printed the innumerable photographs, taken one after the other of an object in motion? A. Yes, that is a fair description of a motion picture film.

4 Q. In the beginning of 1908 there was formed an association in which a number of manufacturers of these moving pictures joined under the name of the Edison Licensees, is that not the fact? If you do not understand the question— A. I understand it.

Q. It was known by that name? A. Yes.

Q. It was formed by a number of these manufacturers taking out licenses from the Edison Company? A. That is my understanding.

Q. And they were known as Edison licensees? A. Yes, sir.

Q. Are you able to state which companies joined that as-

sociation, or took out these licenses? Your company did not? 1

A. No, it did not. I believe those who took licenses from the Edison Company at that time were the Vitagraph Company, S. Lubin, Kalem Company, G. Melies, Essanay Company, Selig Polyscope Company, and Pathe Freres, I believe, took a license sometime later.

Q. That left in the field as opposed to the so-called Edison licensees, your company, the Biograph Company, and George Kleine, who was importing films, is that not correct?

A. Yes, they took no licenses. There were others whom I have mentioned, who did not take any licenses.

Q. In the year 1908, or rather in the latter part of 1907. 2  
there was also formed an association called the Film Service Association, being an association of rental exchanges? A. I understand such an association existed about that time, but I have practically no knowledge of it.

Q. Well, from your knowledge of the business you knew or had information that there was in existence such an organization, did you not? A. That was my impression.

Q. You went to one or two of the meetings of that association in the year 1907? A. No.

Q. During which the formation of the association was 3  
considered? A. I never attended any meeting of the Film Service Association.

Q. The larger proportion of these rental exchanges joined this Film Association, did they not? A. I do not know that any rental exchanges joined any film association. You mean Film Service Association?

Q. Yes. A. Oh, yes, I think that the larger part of exchanges were members of that association.

Q. And that association, or the members of it, entered 4  
into an exchange or license agreements with the Edison Company at the time the Edison licensees formed their association? A. I have no knowledge of that whatever.

Q. Who was the Secretary of the Film Service Association? A. I don't know—Dwight McDonald?

Q. Dwight McDonald? A. I think a man named McDonald was Secretary at one time.

Q. Who became general manager of the Motion Picture Patents Company when it was formed? A. Yes, acting manager.

Q. Now, in 1908 there was after the formation of this association of Edison licensees, very vigorous competition

1 between those Edison licensees and the interests represented by your company, the Biograph Company, and George Kleine? A. Those manufacturers who had taken licenses from the Edison Company and those manufacturers and importers who had not taken licenses competed vigorously for business.

Q. And these two interests were known as two separate factions in the trade, were they not—two camps, on one hand, your company, and George Kleine, and on the other side, the Edison licensees? A. I think they were sometimes so distinguished.

2 Q. Now, in the latter part of 1908, there was formed the Motion Picture Patents Company. Did you take any part in the formation of that company? A. Yes.

Q. As a result of the formation of that company, the two camps, so-called, were brought together—is that not a fair statement? I mean by that by arrangements, by transferring all patents to the Patents Company, and then by the issuing of licenses—all members of those two factions took out licenses from the Patents Company? Is my question clear, if it is not, I will get at it in another way? A. Of course when some of the manufacturers and importers secured licenses under the patents of a similar character to those that were at that time secured by the particular Edison so-called licensees it obliterated the distinction which had formerly existed between those various manufacturers and importers.

3 Q. When did you have your first conference or meeting, and with whom was it, in the effort to form the patents company, or in order to bring about a cessation of this warfare between the two camps? A. According to my recollection of the first interview bearing on any settlement of the existing litigation,—turmoil, was in an interview with either Charles Pathe or Gaumont; I had interviews with each of these men, and at this moment, I do not recall which interview preceded the other.

4 Q. It was in the Summer of 1908? A. It was in the Summer of 1908, and I think prior to the 15th of July.

Q. And then thereafter there was a series of conversations or conferences between you and the other representatives of the Biograph Company with the representatives of the Edison licensees? A. I did not mean to be understood as saying that these interviews were with rep-



representatives of the Edison Company, because they were not. Mr. Pathe and Mr. Gaumont, each of them considered the conditions existing in this country as being very objectionable. 1

Q. Well, the object— A. (Interrupting)—and they endeavored to do something or another that would terminate existing strife.

Q. That is between the two factions? A. I do not know anything about what they had to say to the Edison Company, or people, but they came to us and talked to us about the desirability of doing something of that kind.

Q. That is to stop the warfare between the two factions, that was their object? 2

Mr. WILLIS: Will you kindly let him go on and explain his answer.

By Mr. GROSVENOR:

Q. That was the object of the conferences on the part of Pathe and Gaumont with you? A. It was to relieve mainly the menace of a legal warfare, and the likelihood of any concern being wound up at any time by any decision that might be rendered on the patents that would stop them. 3

Q. When did you have your first conference or meeting with any of the Edison licensees prior to the formation of the Patents Company? A. In July, 1908.

Q. And thereafter was there a series of conferences with the Edison people until the Patents Company was formed in September, 1908? A. Yes, there were subsequent conferences.

Q. Then before the Patents Company was organized you had or it had been decided that these patents should be transferred to it, and that then it should issue licenses to these various manufacturers? A. We did not know the exact method by which the licenses were to be issued and litigation terminated until practically the conclusion of the negotiation. 4

Q. And when was that conclusion? A. Well, I think the contracts arrived at their final form a few days prior to the 18th of December.

Q. Now, on the 18th of December, you had a meeting at

1 which a large number of these manufacturers were present, did you not? A. Yes, sir.

Q. And where was that meeting? A. It was at No. 10 Fifth Avenue.

Q. Please state who was present? A. Mr. Frank L. Dyer—

Q. State also the company with which he was connected?  
A. Mr. Frank L. Dyer, of the Edison Company; Mr. Scull, of the Edison Company; Mr. J. J. Kennedy, of the Biograph Company; Mr. Rock, Mr. Blackton and Mr. Smith of the Vitagraph Company; Mr. Merion and Mr. Long, of the  
2 Kalem Company; Mr. Lubin, Mr. Berst, of Pathe Freres; Mr. Spoor, of the Essanay Company; Mr. Selig, of the Selig Polyscope Company; George Kleine, Mr. Lodge, of the Melies Manufacturing Company.

Mr. CALDWELL: George Melies?

The Witness: Of the George Melies Company. I don't know any others, at this moment.

By Mr. GROSVENOR:

3 Q. On December the 18th, 1908, two sets of agreements were executed—first, four preliminary agreements between the Patents Company and the Biograph Company, the Edison Company and the Vitagraph Company, and Armat Moving Picture Machine Company; secondly, on the same date, nine agreements between the Patents Company and the nine manufacturers, is that not correct? A. There were eight or  
4 nine of the latter agreements—I don't recollect whether—

Q. There were two kinds of agreements, is what I have in mind? A. Yes.

Q. The first relating to the assignments of the patents?  
A. Yes.

Q. And secondly, relating to the taking out of licenses under those patents? A. Yes.

Q. And both sets were executed on the same day? A. Yes.

Q. Now, which were executed first? A. The assignments of the patents were executed first.

Q. Were they all executed at the same meeting? A. I believe they were. Do you mean at the same meeting with the license agreements?

Q. Yes. A. No, they were not.

Q. Then when were these agreements relating to the assignments of the patents, of which there were four agreements, being with the companies I have named, namely, Edison, Biograph, Vitagraph and Armat—when were those agreements executed? Was it in the morning of the same day.

A. I think it was on the same day, but at a meeting held a little earlier in the day.

Q. Now, who were present at that meeting, the same people? A. No. Mr. Dyer of the Edison Company, Mr. Scull of the Edison Company, Mr. Kennedy of the Biograph Company.

Q. Yourself? A. Myself, and I think Mr. Armat.

Q. Thomas Armat? A. Mr. Armat of the Armat Company and Mr. Smith of the Vitagraph Company came in and executed those agreements, but I am a little uncertain about that; my recollection is not clear.

Q. On the same day, that is, December 18th, there was a meeting of the Directors of the Motion Picture Patents Company? A. Yes.

Q. Do you recall that meeting? A. Yes.

Q. And at that meeting you, Mr. Kennedy, and Mr. Dyer and Mr. Scull were elected Directors? A. Yes, sir.

Q. Also officers? A. Yes, sir.

Q. Was the meeting at which you were elected Directors and officers held at the same time as this meeting at which the preliminary agreements for the assignments of the patents were executed? A. It is my recollection that they were executed at that meeting, but I am not clear on that point.

Q. Who was elected President of the Patents Company? A. Mr. Dyer.

Q. And he was Vice-President of the Edison Manufacturing Company? A. I don't know what his position was with the Edison people.

Q. He was connected with the Edison people? A. Yes.

Q. You were elected Vice-President of the Patents Company? A. I was.

Q. And you were Vice-President of the Biograph Company? A. Yes.

Q. Who was elected Treasurer of the Patents Company? A. Mr. J. J. Kennedy.

Q. He was the President of the Biograph Company? A. Yes, sir.

Q. Who was elected Secretary? A. Mr. Scull.



1 Q. And he was connected in some capacity with the Edison Company? A. He was.

Q. Then after this meeting at which these particular agreements were executed you had another meeting you say at which the persons were present with respect to whom you have testified and at which the various license agreements with the Motion Picture Patents Company were signed? A. That is correct.

2 MR. GROSVENOR: I offer in evidence certificate of charter of the Motion Picture Patents Company, dated September the 9th, 1908.

I offer this paper as Petitioner's Exhibit No. 1. As it is the same as Exhibit 1 to the petition, it need not be copied into the record.

### **Petitioner's Exhibit No. 1.**

(This is Exhibit No. 1 to the original petition in this case and is printed at the end of the petition.)

3

By Mr. GROSVENOR:

Q. Now, Mr. Marvin, this charter of the Patents Company names as incorporators Hugh H. Harrison, George J. Murray and William H. Lane. Who was Hugh H. Harrison, do you know? A. I hardly know how to describe him.

Q. Was he connected with a law office? A. I don't think he was connected with a law office.

4 Q. Well, who was he, did you know him? A. I knew him, yes, but I didn't or don't even know what his business is.

Q. And George J. Murray; do you know who he is? A. I don't know anything about him.

Q. William H. Lane? A. I don't know him.

Q. These men were simply temporary Directors, holding office until the company should start business at which time the officers elected on December the 18th, succeeded to their positions? A. Yes, that is correct.

Q. And there was no intention that these men should be permanent officers? A. No.



Mr. GROSVENOR: I offer in evidence four separate agreements of December the 18th, 1908, being the preliminary agreements referred to in the testimony of the witness relating to the assignments of patents to the Patents Company by the Edison Manufacturing Company, American Mutoscope and Biograph Company, the Armat Moving Picture Company, the Vitagraph Company of America which are marked respectively Petitioner's Exhibits Nos. 2, 3, 4, and 5.

Counsel for the defendants produced these documents at the request of the Government.

It is agreed by counsel that

### **Petitioner's Exhibit No. 2.**

being the agreement between Motion Picture Patents Company and Edison Manufacturing Company dated December 18, 1908, is a copy of Exhibit 2 attached to the petition and that said Exhibit 2 to the petition may be used subject to correction. The original Petitioner's Exhibit No. 2, is returned to counsel for defendant.

It is agreed that

### **Petitioner's Exhibit No. 3.**

being the contract dated December 18, 1908, between the Patents Company and the American Mutoscope and Biograph Company, is a copy of the Exhibit No. 1 attached to the answer of the Biograph Company, and counsel for the Government refers to that exhibit to the Biograph Company's answer and therefore Petitioner's Exhibit No. 3 need not be copied.

It is agreed that

### **Petitioner's Exhibit No. 4.**

dated December 18, 1908, between Patents Company and the Armat Moving Picture Company is a copy of the agreement attached as Exhibit No. 1 to the answer of the Armat Moving Picture Company, and need not be copied and said original copy of said agreement is returned to the defendant's counsel.

- 1      It is agreed that Petitioner's Exhibit No. 5, being the agreement dated December 18, 1908, between the Patents Company and the Vitagraph Company of America, will be copied into the record, counsel agreeing that these papers are introduced in evidence subject to correction.

### **Petitioner's Exhibit No. 5.**

AGREEMENT BETWEEN MOTION PICTURE PATENTS COMPANY AND THE VITAGRAPH COMPANY OF AMERICA, OF DECEMBER 18, 1908.

2

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- AGREEMENT made this 18th day of December, 1908, by and between the MOTION PICTURE PATENTS COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Jersey City, in said State (hereinafter referred to as the "PATENTS COMPANY"), party of the first part, and THE VITAGRAPH COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of New York, and having an office at New York in said State (hereinafter referred to as the "VITAGRAPH COMPANY"), party of the second part.

3

(a) WHEREAS, the Vitagraph Company represents that it is the owner of all the right, title and interest in and to United States Letters Patent:

Patent No. 673,329, granted to The American Vitagraph Company as the assignee of Albert E. Smith, dated April 30, 1901, for KINETOSCOPE.

- 4      Patent No. 744,251, granted to Albert E. Smith dated November 17, 1903, for KINETOSCOPE.

Patent No. 770,937, granted The Vitagraph Company of America as the assignee of Albert E. Smith, dated September 27, 1904, for KINETOSCOPE.

Patent No. 771,280, granted to Albert E. Smith, dated October 4, 1904, for WINDING REEL.

Patent No. 785,205, granted The Vitagraph Company of America as the assignee of William Ellwood, dated March

21, 1905, for FLAME-SHIELD FOR KINETOSCOPES. 1

Patent No. 785,237, granted The Vitagraph Company of America as the assignee of Albert E. Smith, dated March 21, 1905, for FILM-HOLDER FOR KINETOSCOPES (hereinafter referred to for brevity as "VITAGRAPH PATENTS") and that there are no outstanding licenses under the said Letters Patent, and is willing and desirous of selling the said Patents to the Patents Company;

(b) WHEREAS, the Patents Company is willing and desirous of purchasing the said patents, and relies upon the representations of the Vitagraph Company; 2

NOW, THEREFORE, THIS INDENTURE WITNESSETH, THAT:

(1) The Vitagraph Company, in and by these presents, for and in consideration of the sum of One Dollar (\$1.00), receipt of which is hereby acknowledged, and of the covenants of the Patents Company in this agreement, does agree to assign, transfer and set over unto the Patents Company, and its successors in business, the entire right, title and interest in and to the said United States Letters Patent Nos. 673,329, 744,251; 770,937; 771,280; 785,205; and 785,237, and the inventions described and claimed therein and the right to sue for and recover damages and profits for past infringement of the said Letters Patent and of each of them provided, however, that the Vitagraph Company shall reserve and retain to itself and its successors in business, the right and license to practice the inventions described in the said Letters Patent without the payment of any royalty thereon to the Patents Company or its successors in business, such right and license being, however, subject to the same covenants, conditions and stipulations which the Patents Company may hereafter impose upon the most favored person, firm or corporation which it may license to manufacture, use and sell apparatus embodying the inventions described and claimed in the said Letters Patent. 3 4

(2) The Patents Company covenants and agrees that it will not grant any licenses to manufacture exhibiting or



- 1    projecting machines under any patents owned by it and covering such machines, unless such licensee shall also accept a license to manufacture and sell exhibiting and projecting machines under the said Vitagraph patents, whether or not such licensee may thereafter make use of any of the inventions covered by said Vitagraph patents.

- 2    (3) The Patents Company covenants and agrees that on all motion picture exhibiting or projecting machines containing the inventions described in one or more of the said Vitagraph patents, manufactured or imported, and sold under the license of the Patents Company, it will charge royalties as follows:

On each such machine capable of exhibiting or projecting by transmitted light, motion pictures, on film of width greater than approximately one inch (1"), a royalty of one dollar (\$1.00).

- 3    On each such machine not capable of exhibiting or projecting by transmitted light, motion pictures on film of a width greater than approximately one inch (1"), a royalty of three-fifths ( $3/5$ ) of one (1) per cent. of the net retail, selling price of such machines.

On each such machine capable of exhibiting or projecting by reflected light, motion pictures on film of any width, but not capable of exhibiting or projecting the same by transmitted light, a royalty of three-fifths ( $3/5$ ) of one (1) per cent. of the net retail selling price of such machines.

- 4    It is understood and agreed by and between the Licensor and the Licensee that the expression "Motion Picture exhibiting or projecting machine," as used hereinbefore or hereinafter, includes motion picture mechanisms or "heads" for such exhibiting or projecting machines, but not any repair parts or portions of such motion picture mechanisms or "heads."

The Patents Company further covenants and agrees that it will on June 20th, 1909, and at the end of each and every year thereafter, assign and pay over to the Vitagraph Company, all such royalties collected by the Patents Company under the provisions of this paragraph, during the period between February 1st, 1909, and June 20th, 1909, and during each year thereafter.



(4) The Patents Company further covenants and agrees 1  
to keep accurate books of account and to permit the Vita-  
graph Company, if it should so desire, to inspect the said  
books of account, through any reputable chartered ac-  
countants, to determine that the sums herein provided have  
been properly assigned and paid to the Vitagraph Com-  
pany.

(5) The Vitagraph Company covenants and agrees that 2  
it has cancelled or will cancel any licenses, shop rights  
or other rights which may have been heretofore granted  
under any or all of the said United States Letters Patent,  
to any person, firm or corporation, and the Vitagraph  
Company further covenants and agrees that it will save  
harmless in all respects the Patents Company from any  
claim under any agreement, contract or other obligation,  
which the Vitagraph Company or its predecessors in title  
may have entered into or assumed with any person, firm  
or corporation concerning or involving any license, shop  
right or other right under any or all of the said United  
States Letters Patent or the applications therefor.

(6) It is further mutually covenanted and agreed by 3  
and between the Patents Company and the Vitagraph Com-  
pany that this agreement shall take effect on the date  
hereof and continue until the expiration of all of the  
Vitagraph patents, and that if, during the life of this  
agreement, either party should knowingly or through gross  
neglect or carelessness be guilty of a breach, violation or  
non-performance of its covenants, conditions and stipula-  
tions, resulting in substantial injury to the other party,  
and should, for a period of thirty days after notice there-  
of from the other party, persist therein or fail to correct, 4  
repair or remedy the same, then and in such case, the party  
aggrieved may terminate this agreement by giving thirty  
days' notice in writing to the guilty party of its intention  
so to do, and it is further mutually covenanted and agreed  
that this agreement may also be terminated by either of  
the parties hereto in case that the Patents Company should  
become bankrupt, cease doing business or should be dis-  
solved voluntarily or otherwise, or its charter should be

1 repealed. It is also further mutually covenanted and  
 agreed that, upon the termination of this agreement for  
 any of the foregoing causes, or any other cause, all of the  
 right, title and interest in and to the said United States  
 Letters Patent Nos. 673,329; 744,251; 770,937; 771,280,  
 785,205 and 785,237, shall be reassigned by the Patents  
 Company to the Vitagraph Company for and in considera-  
 tion of the sum of one dollar (\$1.00).

2 IN WITNESS WHEREOF the parties hereto have  
 caused this agreement to be executed by their officers duly  
 authorized to perform these acts, the day and year first  
 above written.

MOTION PICTURE PATENTS COMPANY

By Frank L. Dyer,  
 President.

Attest:

George F. Scull,  
 Secretary.

3 Motion Picture Patents Company  
 Incorporated September 9, 1908,  
 New Jersey.

THE VITAGRAPH COMPANY OF AMERICA

By William T. Rock,  
 President.

Attest:

J. Stuart Blackton,  
 Secretary.

Vitagraph Company of America  
 Incorporated

4

By Mr. GROSVENOR:

Q. Now, Mr. Marvin, what was done at this second  
 meeting on December 18, 1908, at which these other eight  
 or nine license agreements were signed, being the license  
 agreements under the patents transferred to the Patents  
 Company at the earlier meeting on that same date? A.  
 At that meeting the license agreements, or agreement form,  
 was read and approved, and signed by the licensees.

Q. Was it read paragraph by paragraph? A. Yes. 1

Q. And there had been previous meetings at which the terms of these agreements had been agreed upon so that at the meeting of December 18, nothing remained except to execute the agreements, is that not correct? A. I don't know anything about such meetings—some of the Edison people may have discussed matters with other licensees, and we discussed matters some with George Kleine, but I have no knowledge of former meetings.

Q. Had you not had a conference with Mr. Dyer preceding the meeting of December 18th, as to what should be the terms of these license agreements? A. Yes, we have had conferences with Mr. Dyer, but not with the other licensees. 2

Q. And who had been present at those conferences with Mr. Dyer—Mr. Dyer and yourself, and Mr. Kennedy, had he been with you? A. Yes, I think Mr. Kennedy was sometimes present and sometimes Mr. Scull, and some of these meetings took place in the office of Mr. Phillip, counsel for the Pathe Freres. Mr. Berst may have been present at some meetings when the terms of the agreements were being settled. 3

Q. What is the capital stock of the Patents Company? A. \$100,000.

Q. And one-half of it was taken by the Biograph Company and one-half by the Edison Company? A. Yes, sir.

Q. Now, what was the purpose of this provision in the preliminary agreement relating to the transfer of the patents: "The Edison Company further covenants and agrees not to pledge, sell, or otherwise dispose of its capital stock in the Patents Company, except a minimum number of shares sufficient to qualify one-half of the total number of Directors which the Patents Company may have, without the consent of the Biograph Company and the Armat Company, and the Edison Company further agrees to deposit its certificates of stock in the Patents Company, except such as represents the said qualifying shares for Directors with a responsible trust company named by the Patents Company as trustee, and to instruct the said trustee not to release, transfer or return the said certificates so deposited without the consent of the Biograph 4



1 Company and the Armat Company." A. It was not considered desirable that the stock should get scattered.

Q. Is the stock of the Patents Company held by a trust company to-day under this provision, Paragraph 14 of the agreement, being Exhibit 2, to the petition in this case? A. I believe it is.

Q. Is the stock of the Patents Company which is owned by the Biograph Company held by the same trust company to-day under a similar provision incorporated in the Biograph agreement? A. I think so; I think all of the stock is held by the same trust company.

2 Q. And what is that trust company? A. I believe it is the Empire Trust Company.

Q. Now, this agreement in Paragraph 15, provides: "It is further mutually covenanted and agreed that, upon the termination of this agreement for any of the foregoing causes, or any other cause, all of the right, title and interest in and to the said reissued United States Letters Patents Nos. 12037 and 12192 shall be reassigned by the Patents Company to the Edison Company for and in consideration of the sum of one dollar (\$1.00)." Those two  
3 reissued patents are 12037 and 12192 and were the patents transferred by the Edison Company? A. Yes.

Q. Now, what was the purpose of incorporating in this agreement a provision of this character, that is, permitting the retransfer to the assignor of the patent, provided the Patents Company discontinued business or the licenses were terminated? A. That was to protect the interest of the licensor in the event of the dissolution of the Patents Company.

Q. Has that provision of the agreement been changed since 1908? A. No.

4 Q. Now, is there a similar provision respecting the patents that were assigned by the Biograph Company to the Patents Company? A. Yes.

Q. So that if this agreement should be terminated the patents under the agreement would be reassigned to the Biograph Company in consideration of one dollar? A. Yes.

Counsel for defendants admit that Exhibit 3, of the petition is a true copy of the license agree-



ment December 18, 1908, entered into between the Patents Company and the American Mutoscope and Biograph Company. This agreement is offered in evidence as

### **Petitioner's Exhibit No. 6.**

but is not to be copied, but counsel for the Government refers to Exhibit No. 3, of the petition.

All of the exhibits introduced are admitted subject to correction later on, and if no corrections are made prior to the submission of the case to the Court it is understood they are admitted as true copies.

By Mr. GROSVENOR:

Q. Mr. Marvin, in this license agreement between the Biograph Company and the Patents Company it refers to the license granted by the American Mutoscope and Biograph Company to the firm of Marvin & Casler, "to manufacture and sell cameras and exhibiting or projecting machines, under Letters Patent owned by it, some of which are hereinbefore referred to." Will you produce a copy of that license agreement for examination? A. I will try to.

Q. The agreement also refers to a certain license granted by Armat Motion Picture Company, to the American Mutoscope and Biograph Company under the letters patent enumerated, and to other licenses, granted by the Biograph Company to the Armat Company. Will you also please produce copies of those licenses? A. Yes.

Q. Mr. Marvin, who made for the use of the manufacturers the film upon which they print their pictures? A. Most of that stock comes from the Eastman Kodak Company.

Q. This license agreement between the Biograph Company and the Patents Company provides in Paragraph 4: "The licensee covenants and agrees that in the manufacture of motion pictures, \* \* \* during the continuance of this agreement, the licensee will use exclusively sensitized film manufactured and sold in the United States by a manufacturer or manufacturers authorized by the

1   licensor." What was the company referred to there? A. Any company that the Patents Company might select.

Q. Whom did they select? A. They did select the Eastman Kodak Company.

Q. And it was known at the time that it was the Eastman Kodak Company? A. It was expected that they would be the first one selected because they made the best film at that time.

2   Q. Did you have any part in negotiations which took place between the Eastman Company and the Patents Company, as a result of which a contract was entered into between those two companies? A. Yes.

Q. Under that agreement the Eastman Kodak Company covenanted that it would not sell its film to any manufacturers other than those that took a license from the Patents Company? A. No.

Q. Was not that understood and agreed in 1909? A. No.

3   Q. What was the agreement? A. Why, the Eastman Company were privileged to supply film to any of their old customers abroad, who might open up factories in this country, and they were also permitted to supply a certain limited quantity of film to experimenters, scientists and others, and they were, I believe, permitted to supply film of a certain width to any one.

Q. They were not permitted under the agreement to sell the film of standard width to other manufacturers in the United States than those who entered into license agreements with the Patents Company? A. Yes, they were allowed to supply film to any foreign manufacturer who had been customers of theirs and who might come over and start a factory in the United States at any time.

4   Q. Were they allowed to sell sensitized film of the standard width to others than the Patents Company licensees, excepting these customers of theirs who had foreign plants and whom you have just named? A. Only to a limited extent.

Q. And by that limited extent you mean what? A. I have forgotten the percentage, I think it was something like three per cent. of their output or something of that sort; it appears in the answer.

Q. That three per cent. had relation to the film that was to be used for scientific purposes? A. Yes. 1

Q. Then was the Eastman Company allowed to sell sensitized film of the standard width, to manufacturers in this country other than the Patents Company licensees and those foreigners you have named or that you have referred to? A. Only to the extent of this minimum amount that I mentioned.

Q. They could not other than that? A. Not other than that.

Q. And that was only to certain customers of theirs and those who were to use the film for scientific purposes? A. Yes. 2

Q. But they were not allowed to sell it to manufacturers who were making motion pictures for exhibition purposes? A. Except as they came over from Europe, their former customers.

Q. Unless they were former customers the Eastman Company was debarred from selling to manufacturers the film of standard width for the manufacture of motion pictures? A. Yes, under those conditions.

Q. Now, was there any other manufacturer in the United States at that time manufacturing suitable film for the use of motion pictures? A. I don't know of any that was making suitable film at that time. 3

Mr. WILLIS: I desire to enter an objection to the parts of the examination of the witness with reference to the Eastman Kodak Company agreement, as immaterial, and for other reasons to be hereafter stated.

Mr. GROSVENOR: Counsel for the defendants have produced at the request of the Government certain circulars issued by Motion Picture Patents Company to Film Rental Exchanges, and also circulars to exhibitors; I introduce the following papers or parts thereof as stated in evidence. 4

### **Circulars to Film Rental Exchanges.**

Q. Will you please read that paper which I hand you, Mr. Marvin? A. I have.



1 Q. This paper which you have read dated January 9, 1909, states, "In addition to the licensed manufacturers whose films licensed exchanges have heretofore been permitted to handle, the Motion Picture Patents Company has licensed the American Mutoscope & Biograph Company of New York City, which has a present output of two reels a week; and Mr. George Kleine of Chicago, who will have a weekly output of two reels of Gaumont film and one reel of Urban Eclipse Film." Prior to this agreement George Kleine had represented a number of foreign manufacturers had he not? A. Yes.

2 Q. Seven or eight? A. I don't know how many.

Q. Quite a number? A. Several, I think.

Q. Now, under this agreement he was barred from importing any foreign film except those stated here, namely, two reels of Gaumont film and one reel of Urban Eclipse film? A. Yes, that is different subjects, he could import an unlimited quantity of goods of those subjects, of course.

Q. Yes, but I mean he was barred from importing any goods of other manufacture? A. Yes.

Q. Excepting those two named? A. Yes.

3 Q. Prior to this agreement he had been importing all others besides those two named? A. Yes, I think he had.

Q. I read further: "The new agreement will be found not to materially alter the present system of handling licensed film, the principal change being that no licensed motion pictures will be permitted to be used on any projecting machine which is not licensed by the Patents Company under its patents. All projecting machines now in use will be licensed by February 1, 1909, upon the payment of a nominal fee." Now, that applies to the so-called exhibitors' royalty, that sentence, does it not? A. Yes, the payment of that small fee there is the license fee for the use of the projecting machines.

4 Q. What was that fee? A. Well, it has been fixed and has continued at approximately two dollars per week.

Q. Every exhibitor? A. From each person licensed to use a projecting machine covered by our patents.

Q. At that time there were a large number of projecting machines owned by the different exhibitors in the United States? A. Yes, they owned them so far as they could under infringing machines.



Q. At that time how many exhibitors were there in the United States approximately? A. I should say somewhere in the neighborhood of six thousand. 1

Q. How many of those were given licenses by the Patents Company? A. Well, the Patents Company has continued to give licenses.

Q. I asked how many of those six thousand, approximately, received licenses from the Patents Company in the year 1909, that is, when you commenced operations, by February 1, or March 1, 1909? A. Well, a very large number applied quite promptly and were granted licenses and others came in from time to time, and I cannot tell how many of that original number may never have received licenses—how many received licenses, I should say the larger proportion of them were licensed. 2

Q. A number of thousands? A. Yes.

Q. Four or five thousand, anyway? A. Well, three to four thousand.

Q. So then two dollars per week was exacted from every one of those exhibitors upon machines which they had at that time in their theatres? A. If they took licenses from them, it was.

Q. In order to get the films of any of these manufacturers they had to take a license, did they not? A. Licensed film is not supplied for use on infringing machines. 3

Q. In order to get film from any of these manufacturers these exhibitors had to take licenses, didn't they? A. Yes.

Q. And in order to get a license they had to pay two dollars per week? A. Yes.

Q. Therefore, whether or not the exhibitor purchased his projecting or exhibiting machine after February 1, 1909, he was obliged to pay those two dollars per week? You understand my question? A. Yes, I think I understand your question. He was obliged to pay that two dollars per week in order to obtain a license to use a machine embodying our invention. 4

Q. That is, to use the machine in a theatre? A. Yes, sir, if the machine embodied the inventions covered by our patents.

Q. Did you make examinations of these different machines in these different theatres? A. We usually asked them when they made application to send us descriptions of their machines.

1 Q. Well, did that description have any effect upon the question of whether or not you should impose a two dollar license? A. We never found any machines that did not infringe our patents, so it practically didn't have.

Q. Some of those machines which you claim or state had been infringed had been sold outright by some of these manufacturers? A. Some of which manufacturers?

Q. Let me state it differently: Each of the Patents Company's licensees had been selling projecting machines, had they? A. Yes, sir.

2 Q. Had they been selling a large number in the years 1907 and 1908? A. Yes, I think so.

Q. Now, take the exhibitor with an Edison projecting machine. When this license arrangement went into effect did you impose the license for two dollars a week upon those exhibitors or theatre owners who owned Edison projecting machines which they had bought outright prior to February 1, 1909? A. Yes, they were infringing machines. They embodied inventions in our patents.

3 Q. Were the owners of all projecting machines in use in United States at that time obliged to pay the two dollars per week to you in order to get film after February 1, 1909? A. They were obliged to pay that royalty to us for a license, and it was necessary for them to have a license in order to get the licensed film.

Q. In order to get the film, whether you call it "Licensed" or any other term, they had to pay you that fee? A. No, they could get unlicensed.

Q. In order to get film from you they had to pay the two dollars? A. From the licensed manufacturer?

Q. Yes. A. Yes.

4 Q. What others of the Patents Company's licensees—I am referring now to the nine who took licenses from the Patents Company on December 18th—what others besides the Edison Company had been selling projecting machines? A. Lubin—S. Lubin; I think Pathe Freres had sold some; I believe the Essanay Company and the Selig Polyscope Company had sold a few machines.

Q. Now, had those five companies you have named, Edison, Pathe Freres, Selig, Essanay and Lubin sold these projecting machines outright subject to no conditions to those exhibitors? A. I think they had.

Q. And it was upon those machines under this new arrangement that the license of two dollars per week was now imposed by the Patents Company? A. Yes. 1

Q. Had your company sold any machines? A. No.

Q. What other manufacturers of projecting machines were there in the United States at that time? A. Nicholas Power Company, Enterprise Optical Company and Eberhardt-Snyder; I don't recall any others.

Q. Had those companies sold machines outright, I refer to projecting machines? A. I believe they had.

Q. And upon their machines, also, acquired by the exhibitors, this license fee was imposed? A. Yes, if they wanted a license. 2

Q. Now, this paper marked "Defendants' Exhibit No. 7," states: "Established Exhibitors will be protected as much as possible by the Patents Company, which will carefully scrutinize each application for a license from any new exhibitor. No license will be granted for a new theatre in any district already well provided for." What officer of the Patents Company had in charge the consideration of the matters referred to in that paragraph which I just read? A. Principally myself. 3

MR. GROSVENOR: I now offer in evidence the paper marked Petitioner's Exhibit No. 7.

### **Petitioner's Exhibit No. 7.**

To the Film Rental Exchanges:

The Motion Picture Patents Company has been incorporated for the purpose of taking over, and has acquired, the ownership of the Edison, Biograph, Armat, and Vitagraph patents, which, we are assured by counsel, cover all modern moving picture films and all existing commercial types of projecting machines. The Patents Company proposes to control the business in such a way that the honest and legitimate exchange, whether a member of the F. S. A., or not, shall be protected from the unfair and ruinous competition of the dishonest exchange. This can only be done by insisting that all exchanges who may desire protection under the above patents shall conform rigidly to 4



1 the fair and reasonable rules which the Company has formulated and which are embodied in a proposed license agreement herewith submitted for your consideration.

In addition to the Licensed Manufacturers whose films licensed exchanges have heretofore been permitted to handle, the Motion Picture Patents Company has licensed the American Mutoscope & Biograph Company of New York City, which has a present output of two reels a week; and Mr. George Kleine of Chicago, who will have a weekly output of two reels of Gaumont film and one reel of Urban Eclipse film, and the product of these two  
2 new licenses will be available to licensed exchanges after January 11, 1909.

All of the present licensed exchanges, except a few whose credit is very bad or who have flagrantly violated their agreements, will be invited to sign the new agreement with the Patents Company, as will the exchanges now operated by the Kleine Optical Company, and a very few of the more substantial independent exchanges.

The new agreement will be found not to materially alter the present system of handling licensed film, the principal change being that no licensed motion pictures will be permitted to be used on any projecting machine which is  
3 not licensed by the Patents Company under its patents. All projecting machines now in use will be licensed by February 1, 1909, upon the payment of a nominal fee. The Patents Company has licensed all of the present manufacturers of projecting machines of any importance, and the machines sold by these manufacturers after February 1st, will bear patent plates setting forth the conditions under which these machines shall be used, these conditions being the same as will be applied to the machines now in use.  
4 Each exhibitor will be required to pay a royalty after February 1st. The total royalty for the period from February 1st to March 8th, will be \$10 for each exhibitor, but it is the intention to equalize this fee as soon as practicable, so that small exhibitors will not be required to pay so much, and the large exhibitors more, the average being maintained as nearly as practicable at \$2 per week. Each exhibitor must make application for a machine license on a form to be furnished by the Patents Company and the application must be accompanied by the



royalty fee of \$10 to cover the period of the first five weeks from February 1st to March 8th, 1909. Before any license is granted to an exchange by the Patents Company, the exchange must furnish a list of theatres now being supplied by it, together with certain data as to the character of each theatre, its size and location, and kind of film service it takes, all as called for on the blank which will be furnished to the exchanges. These lists must be at the office of the Patents Company in New York City, by January 20, 1909, and the Patents Company will refuse to grant a license to any exchange failing to furnish such lists on that date, unless the distance of the exchange from New York City warrants lenience. After February 1, 1909, an exchange, before accepting an order for service, must ascertain whether or not the exhibitor desiring service has a license for his projecting machine and must refuse to supply licensed film to that exhibitor until he shall have obtained a license. On accepting an order for service from an exhibitor having a licensed machine the Exchange must mail to the Patents Company at its office in New York City the data in relation to the place of exhibition, etc., including the time the service is to begin, and a blank will be supplied by the Patents Company for this purpose. In a similar manner each exchange losing a customer must notify the Patents Company. Exchanges will be obliged to cease supplying with film any exhibitor whose fees are not paid. Each exchange should advise all of its exhibitors to apply immediately to the Patents Company for a license for the machines used by the exhibitors, so that the exhibitor may not be in danger of being cut off from his supply of film on February 1st.

In addition to the foregoing change the following are the only material differences between the old and new agreements:

(a) Hereafter licensed motion pictures will not be sold outright but will be leased by the various licensed manufacturers and importers, so that the latter may at all times retain title and be in a position to recover possession of such pictures should they be found in the hands of exchanges or exhibitors not entitled to use them.

(b) Exchanges will be permitted to sub-lease film only

- 1 for use in the United States and its territories and will not be permitted to sub-lease them for use in Canada, Mexico and other foreign countries.

(c) The same requirement for the return of motion pictures is made in the new agreement as was made in the old one, and it is intended that this clause shall be enforced and in this way prevent the exhibition of worn out and damaged pictures.

- 2 (d) Hereafter when any motion pictures are destroyed or lost it will be necessary within fourteen (14) days after such destruction or loss, for the exchange to furnish satisfactory proof to the Manufacturer or Importer from which such picture was obtained, in order that the exchange will not have to account for that film when it should be otherwise returned to the Manufacturer or Importer.

- 3 (e) Under the new agreement no distinction is made between an exchange and a branch. A license agreement will be necessary for each place of business operating as an exchange and no exchange is to establish a branch or  
4 any new place of business unless the regular license agreement is first signed for the new exchange and accepted by the Patents Company. By this means all controversy as to what constitutes a branch and who is responsible for it, will be avoided and failure to meet the requirements of the conditions of the license for one exchange will not necessarily jeopardize the license for any other exchange. Each exchange or branch will be required to purchase \$2,500 worth of film per month for direct shipment to its office. This change is intended to eliminate insignificant offices which have been used heretofore simply as an outlet for worn out films.

(f) If any one wishes to open a new office, it will be necessary to apply to the Motion Picture Patents Company for a license and that Company will determine whether or not the new office would be beneficial to the whole trade and will accordingly grant or refuse the license.

(g) Payments on all invoices received during each week

must be made directly to, or mailed to the Manufacturer or Importer from whom the films were leased, on each Monday.

(h) No minimum schedule has been incorporated in the new agreement, although it is contemplated that such a schedule, will, in the near future, be established when the exchanges have adjusted themselves to the workings of the new conditions of license. Such a schedule will be drawn after consultation with representative exchanges and will be as fair as possible to all.

(i) The signing of this new license with the Patents Company will constitute a cancellation of all of the present agreements between an exchange and the licensed Manufacturers, except so far as the return of old film is concerned.

The Patents Company reserves the right to revoke the license on fourteen (14) days' notice, and also to revoke it at once on proof of violation of any of the conditions. If the license is revoked, because of violation on the part of the exchange, all licensed motion pictures in the possession of the exchange will be returned to the Manufacturers or Importers from whom they were obtained at the end of twenty (20) days, and the exchange agrees that the Patents Company may direct the various Manufacturers and Importers to cease supplying the exchange with motion pictures.

It will be noted from the foregoing changes that the only departure from the spirit of the old agreement lies in the fact that hereafter licensed motion pictures and licensed projecting machines only can be used together. This will insure that licensed exchanges will be absolutely protected from unfair and infringing competition, since all projecting machines now in use are covered by the patents of the Patents Company, and all exhibitors, therefore, would be compelled to use only licensed film.

Established exhibitors will be protected as much as possible by the Patents Company, which will carefully scrutinize each application for a license from any new exhibitor. No license will be granted for a new theatre in any district already well provided for.

All exchanges and exhibitors will be protected by the



- 1 Patents Company under its patents, and infringers of  
any of these patents will be vigorously prosecuted.  
January 9, 1909.

MOTION PICTURE PATENTS COMPANY,  
10 Fifth Avenue,  
New York City.

---

By Mr. GROSVENOR:

- Q. At this meeting of December 18th, 1908, at which the  
2 license agreements were executed, the so-called license ex-  
change agreements were considered by the manufacturers,  
were they not? I refer to the exchange agreement executed  
with the Patents Company with these different rental ex-  
changes? A. I do not recall that that agreement was dis-  
cussed at that meeting.

Q. Was it read at the meeting? A. Not according to my  
recollection.

- Q. When was this exchange agreement, being Exhibit  
No. 4, to the petition, adopted? A. I think that was adopted  
shortly after the meeting of December 18th, I do not re-  
3 member the exact date.

It is admitted that Exhibit No. 4 to the petition is  
a true copy of the so-called exchange license agree-  
ment, entered into between Motion Picture Patents  
Company and the Rental Exchanges.

Q. Mr. Marvin, I wish you would read over this letter  
of January 12, 1909, which has been marked "Petitioner's  
Exhibit No. 8? A. I have read the letter.

- Q. When the Patents Company was formed, each of these  
4 rental exchanges were required to send to the Patents Com-  
pany a list of their customers? A. If they took a license,  
yes.

Q. And also certain information respecting each of the  
theatres? A. Yes.

Q. That is the size of the theatre, a general description of  
it, and the number of seats? A. The seating capacity of  
the theatre and the make of the projecting machine.

Q. Will you please produce a copy of the form which was



sent out and upon which that information was stated? A. 1  
I will.

Q. In this letter of January 12th, which you have just read, Exhibit No. 8, you state: "Nothing official need be said to your customers at the present time regarding the machine patents, royalties, etc. Within a few days, however, full instructions upon these points will reach you, together with a request from us for detailed information regarding the theatres you supply." When you say, "nothing official need be said to your customers at the present time regarding the machine patents, royalties, etc.," you 2  
refer to the two dollars per week which the customers were presently to be asked to pay? A. I do not really know. I did not write that letter and I cannot say exactly what was in the mind of the writer.

Q. Was there a meeting of the rental exchanges, called early in January in New York City, at which this new license agreement, exchange agreement, was considered? A. There was a meeting there at that time. I don't know who called it, but upon the occasion of that meeting the proposed rental license agreements were taken up with some of the rental exchanges.

Q. How many rental exchanges were there approximately 3  
in the United States in 1909, at the time of the formation of the Patents Company? A. In 1909?

Q. Yes, or in the latter part of 1908? A. Why, I should say there were probably about 150.

Mr. GROSVENOR: I now offer in evidence the letter dated January 12, 1909, being Petitioner's Exhibit No. 8.

1

**Petitioner's Exhibit No. 8.****MOTION PICTURE PATENTS COMPANY**

10 Fifth Avenue

New York City.

Frank L. Dyer, President

H. N. Marvin, Vice-President

J. J. Kennedy, Treasurer

George F. Scull, Secretary

2 D. MacDonald, General Manager

Telephone, 1352 Gramercy

January 12th, 1909

Dear Sir:

We enclose official copies of the License Agreement to be issued by this Company to its several licensees, under which licensed motion pictures may be leased by exchanges from the manufacturers.

3 Both copies of this agreement should be signed by you, and at once returned with a list of your customers. Such lists should be made up from your office records upon the form enclosed, giving the names of theatres you supply, their locations, and the names of their owners. Replies will be expected from exchanges in the East within a few days, and (the regular course of the mails permitting) all replies must be in with the signed License Agreements before WEDNESDAY, JANUARY 20th, 1909.

4 Nothing official need be said to your customers at the present time regarding the machine patents, royalties, etc. Within a few days, however, full instructions upon these points will reach you, together with a request from us for detailed information regarding the theatres you supply.

Yours very truly,

**MOTION PICTURE PATENTS COMPANY**

By

General Manager

[Endorsement]:

1

Exchange  
License Agreement  
Between  
Motion Picture Patents  
Company  
and  
License Agreement, with Condition of  
License and Leasing Prices.  
[Official Seal]

2

## EXCHANGE LICENSE AGREEMENT.

Whereas, the Motion Picture Patents Company of New York City (hereinafter referred to as the "Licensor") is the owner of all the right, title and interest in and to reissued Letters Patent No. 12,192, dated January 12, 1904, granted to Thomas A. Edison, for Kinetoscopic Film, and also Letters Patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, for inventions relating to motion picture projecting machines; and

3

Whereas, The Licensor has licensed the American Mutoscope and Biograph Company of New York City, the Edison Manufacturing Company of Orange, New Jersey; the Essanay Company of Chicago; the Kalem Company of New York City; George Kleine of Chicago; Lubin Manufacturing Company of Philadelphia; Pathe Freres of New York City; the Selig Polyscope Company of Chicago; and The Vitagraph Company of America, of New York City, (hereinafter referred to as "Licensed Manufacturers or Importers") to manufacture or import motion pictures under the said reissued Letters Patent and to lease licensed motion pictures (hereinafter referred to as "Licensed Motion Pictures") for use on projecting machines licensed by the Licensor; and

4

Whereas, the undersigned, (hereinafter referred to as the "Licensee") desires to obtain a license under said reissued Letters Patent No. 12,192, to lease from the Licensed Manu-



- 1   facturers and Importers licensed motion pictures and to sub-  
let the said licensed motion pictures for use on projecting ma-  
chines licensed by the Licensor;

Now, therefore, the parties hereto, in consideration of the covenants herein, have agreed as follows:

- 2       (1) The Licensor hereby grants to the Licensee for the term and subject to the conditions expressed in the "Conditions of License" hereinafter set forth, the license, under the said reissued Letters Patent No. 12,192, to lease licensed motion pictures from the Licensed Manufacturers and Im-  
porters and to sub-lease said license motion pictures for use only on projecting machines licensed by the Licensor under Letters Patent owned by it.

- 3       (2) The Licensee covenants and agrees to conform with and strictly adhere to and be bound by all of the "Conditions of License," hereinafter set forth, and to and by any and all future changes in or additions thereto, and further agrees not to do or suffer any of the acts or things thereby prohibited, and that the Licensor may place and publish the Licensee's name in its removal or suspended list in the event  
4   of the termination of this agreement by the Licensor, or in case of any violation thereof, and may direct the Licensed Manufacturers and Importers not to lease licensed motion pictures to the Licensee, the Licensee hereby expressly agreeing that such Licensed Manufacturers and Importers shall have the right to cease such leasing when so directed by the Licensor; and the Licensee further agrees that the signing of this agreement constitutes a cancellation of any or all agreements for the sale of licensed motion pictures made prior to this agreement by and between the Licensee and any or all licensed manufacturers or importers,  
except as to any clause in said agreements relating to the return of motion picture film to the several licensed manufacturers or importers. It is further understood and agreed by the Licensee that the license hereby granted is a personal one and not transferable or assignable, and the Licensee hereby recognizes and acknowledges the validity of the said reissued Letters Patent No. 12,192.

## CONDITIONS OF LICENSE.

1

1. From the date of this agreement the Licensee shall not buy, lease, rent, or otherwise obtain any motion pictures other than licensed motion pictures and shall dispose of any motion pictures only by the sub-leasing thereof under the conditions hereinafter set forth.

2. The ownership of each licensed motion picture leased under this agreement shall remain in the Licensed Manufacturer or Importer from whom it may have been leased, the Licensee, by the payment of the leasing price acquiring only the license to sub-let such motion picture subject to the conditions of this agreement. Such license for any motion picture shall terminate upon the breach of this agreement in regard thereto, and the Licensed Manufacturer or Importer from whom it may have been leased, shall have the right to immediate possession of such motion picture, without liability for any leasing price or other sum, which the Licensee, or the person in whose possession said motion picture is found, may have paid therefor.

2

3. The Licensee shall not sell nor exhibit licensed motion pictures obtained from any Licensed Manufacturer or Importer, either in the United States or elsewhere, but shall only sub-let such licensed motion pictures and only for use in the United States and its territories and only to exhibitors who shall exclusively exhibit licensed motion pictures, but in no case shall the exhibitor be permitted to sell or sub-let or otherwise dispose of said licensed motion pictures.

3

4. The leasing price to be paid by the Licensee to the Licensed Manufacturers or Importers, or the terms of payment for or shipment of licensed motion pictures, shall in no case be less or more favorable to the licensee than that defined in the leasing schedule embodied in this agreement, or any other substitute leasing schedule, which may be regularly adopted by the Licensor, and of which notice shall be given to the Licensee hereafter.

4

5. To permit the Licensee to take advantage of any standing order leasing price mentioned in such schedule, such

- 1 standing order with any Licensed Manufacturer or Importer shall be for one or more prints of each and every subject regularly produced, and offered for lease by such manufacturer or importer as a standing order subject and not advertised as special by such Licensed Manufacturer or Importer; and shall remain in force for not less than fourteen (14) consecutive days. Any standing order may be cancelled or reduced by the Licensee on fourteen (14) days' notice. Extra prints in addition to a standing order shall be furnished to the Licensee at the standing order leasing price.
- 2 6. The Licensee shall not sell, rent, or otherwise dispose of, either directly or indirectly, any licensed motion pictures (however the same shall have been obtained) to any persons, firms or corporations or agents thereof, who may be engaged either directly or indirectly in selling or renting motion picture films.
- 3 7. The Licensee shall not make or cause to be made, or permit others to make reproductions or so-called "dupes" of any licensed motion pictures, nor sell, rent, loan or otherwise dispose of or deal in any reproductions or "dupes" of any motion pictures.
- 4 8. The Licensee shall not deliberately remove the trademark or trade-name or title from any licensed motion picture nor permit others to do so, but in case any title is made by the Licensee, the Manufacturer's name is to be placed thereon, provided that in making any title by the Licensee, the Manufacturer's trademark shall not be reproduced.
- 4 9. The Licensee shall return to each Licensed Manufacturer or Importer (without receiving any payment therefor, except that the said Licensed Manufacturer or Importer shall pay the transportation charges incident to the return of the same) on the first day of every month commencing seven months from the first day of the month on which this agreement is executed, an equivalent amount of positive motion picture film in running feet (not purchased or leased over twelve months before) and of the make of the said Licensed Manufacturer or Importer, equal to the amount of licensed motion pictures that was so leased during the seventh



month preceding the day of each such return, with the exception, however, that where any such motion pictures are destroyed or lost in transportation or otherwise, and satisfactory proof is furnished, within fourteen (14) days after such destruction or loss, to the Licensed Manufacturer or Importer from whom such motion picture was leased, the Licensed Manufacturer or Importer shall deduct the amount so destroyed or lost from the amount to be returned.

10. The Licensee shall not sell, rent, sub-let, loan or otherwise dispose of any licensed motion pictures (however the same may have been obtained) to any person, firm or corporation in the exhibition business, who may have violated any of the terms or conditions imposed by the Licensor through any of its licensees and of which violation the present Licensee may have had notice.

11. The Licensee shall not sub-lease motion pictures to any exhibitor unless a contract with said exhibitor (satisfactory in form to the Licensor) is first exacted, under which the exhibitor agrees to conform to all the conditions and stipulations of the present agreement applicable to the exhibitor; and in the case of an exhibitor who may operate more than a single place of exhibition, a similar contract shall be exacted in connection with each place so operated, and supplied with licensed motion pictures by the Licensee.

12. After February 1st, 1909, the Licensee shall not sub-lease any licensed motion pictures to any exhibitor unless each motion picture projecting machine on which the licensed motion pictures are to be used by such exhibitor is regularly licensed by the Motion Picture Patents Company, and the license fees therefor have been paid; and the Licensee shall, before supplying such exhibitor with licensed motion pictures mail to the Motion Picture Patents Company, at its office in New York City, a notice, giving the name of the exhibitor, the name and location of the place of exhibition (and, if requested to do so by the Licensor, its seating capacity, hours of exhibition and price of admission, and the number and make of the licensed projecting machine or machines), together with the date of the commencement of the sub-leasing, all in a form approved by the Licensor. The Licensee, when

1 properly notified by the Licensor, that the license fees of any exhibitor for any projecting machine have not been paid, and that the license for such projecting machine is terminated, shall immediately cease to supply such exhibitor with licensed motion pictures.

2 13. The Licensee agrees to order during each month while this agreement is in force, for shipment directly to the place of business of the Licensee in the City for which this agreement is signed, licensed motion pictures, the net leasing prices for which shall amount to at least \$2500.

14. The Licensee shall, on each Monday during the continuance of this agreement, make or mail payment to each Licensed Manufacturer and Importer for all invoices for licensed motion pictures which have been received by the Licensee during the preceding week.

3 15. This agreement shall extend only to the place of business for the sub-leasing of motion pictures maintained by the Licensee in the City for which this agreement is signed, and the Licensee agrees not to establish or maintain a place of business for the sub-leasing of motion pictures, or from which motion pictures are delivered to exhibitors, in any other City, unless an agreement for such other City, similar to the present agreement, is first entered into by and between the Licensee and the Licensor.

4 16. The Licensor agrees that before licensing any person, firm or corporation in the United States (not including its insular territorial possessions and Alaska) to lease licensed motion pictures from Licensed Manufacturers and Importers and to sub-lease such motion pictures, it will exact from each such licensee, an agreement similar in terms to the present agreement, in order that all licensees who may do business with the Licensed Manufacturers and Importers will be placed in a position of exact equality.

19. It is understood and specifically covenanted by the Licensee, that the Licensor may terminate this agreement on fourteen (14) days' written notice to the Licensee of its intention so to do, and that if the Licensee shall fail to faithfully keep and perform the foregoing terms and conditions

of lease, or any of them, or shall fail to pay the leasing price for any motion pictures supplied by any Licensed Manufacturer or Importer when due and payable, according to the terms of this agreement, the Licensor shall have the right to place the Licensee's name on an appropriate suspended list, which the Licensor may publish and distribute to its other licensees and to exhibitors and to the Licensed Manufacturers and Importers and to direct the Licensed Manufacturers and Importers not to lease licensed motion pictures to the Licensee, and the exercise of either or both of these rights by the Licensor shall not be construed as a termination of this license, and the Licensor shall also have the right in such case, upon appropriate notice to the Licensee, to immediately terminate the present license, if the Licensor shall so elect, without prejudice to the Licensor's right to sue for and recover any damages which may have been suffered by such breach or non-compliance with the terms and conditions hereof by the Licensee, such breach or non-compliance constituting an infringement of said reissued Letters Patent. It is further agreed by the Licensee that if this agreement is terminated by the Licensor for any breach of any condition hereof, the right to possession of all licensed motion pictures shall revert, twenty days after notice of such termination, to the respective Licensed Manufacturers and Importers from whom they were obtained and shall be returned to such Licensed Manufacturers or Importers at once after the expiration of that period.

20. It is understood that the terms and conditions of this license may be changed at the option of the Licensor upon fourteen (14) days' written notice to the Licensee, but no such change shall be effective and binding unless duly ratified by an officer of the Licensor.

#### Leasing Prices of Licensed Positive Motion Pictures.

List .....	13	cents	per	running	foot
Standing Order .....	11	"	"	"	"
Films leased between two and four months after release date	9	"	"	"	"
Films leased between four and six months after release date	7	"	"	"	"
Films leased over six months after release date.....	5	"	"	"	"



- 1 A rebate of 10% will be allowed on all leases of licensed motion pictures, except at the 7 cent and 5 cent prices, which are net; said rebates to be due and payable between the 1st and 15th days of each of the months of March, May, July, September, November and January, on all films leased during the two months preceding each said period, provided all the terms and conditions of this license agreement have been faithfully observed.

### Terms.

- 2 All shipments are made F. O. B. lessor's office at lessee's risk.  
 All motion picture films are to be shipped to lessee's office only.  
 The lengths at which motion picture films are listed and leased are only approximate.

### MOTION PICTURE PATENTS COMPANY By

President.

- 3  
 LICENSEE'S SIGNATURE .....  
 Place of business for which this license is granted  
 Street and No. ....  
 City ..... State .....  
 Date .....

- 4  
 Date .....  
 Name of Exchange .....  
 Address .....

### LIST OF CUSTOMERS

Town or City	State	Number and Street	Name of Theatre	Name of Owner
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Thereupon, at 12:30 o'clock P. M., on this January 15, 1913, the hearing was adjourned until 2:30 o'clock P. M., January 15th, 1913. 1

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New York City, January 15, 1913.

The hearing was resumed pursuant to adjournment at 2:30 o'clock P. M.

The appearances are the same as at the morning session. 2  
Thereupon HARRY N. MARVIN resumed the stand for further examination.

Direct examination continued:

By Mr. GROSVENOR: Now, I offer in evidence this exhibit dated January 30, 1909, being letter issued to the Licensed Film Exchanges.

The paper is marked Petitioner's Exhibit No. 10, and is as follows: 3

**Petitioner's Exhibit No. 10.**

**MOTION PICTURE PATENTS COMPANY**

10 Fifth Avenue

New York City

Frank L. Dyer, President  
H. N. Marvin, Vice-President  
J. J. Kennedy, Treasurer  
George F. Scull, Secretary 4

D. Macdonald,  
General Manager

Telephone, 1352 Gramercy

Exch. Form—7

January 30, 1909.

Dear Sir:—

The progress of licensing exhibitors is proceeding as

1 fast as the hundreds of applications received by us can have attention, but in order to avoid any possible inconvenience to your customers who desire to use the licensed film which you will rent after February 1, 1909, according to the terms of your license agreement with us, we advise as follows:

(1) Continue service to all exhibitors who state to you that they have mailed applications for license to the Patents Company.

2 (2) All exhibitors who have applied for licenses will as rapidly as possible receive from us acknowledgment of their remittances and be notified that licenses will be issued, and within a short period thereafter should receive the framed license certificates to be displayed in their theatres.

(3) In addition to the above, we will furnish to you, within a short time a list of your customers who have been licensed.

3 Many letters received from exhibitors indicate that they do not understand the conditions of the license, and in writing to customers with whom you cannot come in personal touch it would be well to make clear:

(1) There is no contract, paper or agreement of any kind to be signed by the exhibitor, and in no way is the exhibitor bound for a longer period than he may elect to stay.

4 (2) The one condition is that the exhibitor shall receive and display our license certificate in his theatre only so long as he continues to use the licensed service. At any time the exhibitor may wish to stop using licensed film he may surrender the license.

(3) The license of the exhibitor covers the place of exhibition, and also covers every machine which at any time the exhibitor may use in the licensed



place to exhibit licensed film, provided that all machines so used were bought before February 1, 1909. All machines bought after February 1, 1909, must bear the Patents Company license tag if they are to be used in licensed places of exhibition.

Yours very truly,

MOTION PICTURE PATENTS COMPANY,

By D. Macdonald,

General Manager.

You may continue serving the cameraphone customers until further notice.

---

Mr. GROSVENOR: Next is one dated February 8, 1909. These are all to the Licensed Film Exchanges. Petitioner's Exhibit No. 11 is as follows:

**Petitioner's Exhibit No. 11.**

Exchange Letter—Form 10.

MOTION PICTURE PATENTS COMPANY

10 Fifth Avenue

New York City

Frank L. Dyer, President

H. N. Marvin, Vice-President

J. J. Kennedy, Treasurer

George F. Scull, Secretary

D. Macdonald,

General Manager

Telephone, 1352 Gramercy

February 8, 1909.

To Licensed Film Exchanges:

Dear Sirs:

**LIST OF YOUR LICENSED CUSTOMERS.**

On February 6th we mailed to you a list of your cus-

- 1    tomers who have been licensed by us, as complete as the rush of applications which we were compelled to handle during the past week permitted.

We hand you enclosed a list complete to date and beg to advise you that in accordance with our letter of the 5th inst. you are to discontinue service to each of your customers whose name does not appear upon this list, unless on or before February 13th such customer has forwarded his application for license to the Patents Company accompanied by the license fee of \$10.

2

### LICENSE FEE.

- 3    The license fee between February 1st and March 8th, 1909, will be uniform in every case, the amount being \$10 regardless of when the licensed service may have begun. This initial fee is fixed as a preliminary fee from each theatre in order to meet organization expenses and cover part of the heavy charges incident to installing our plant, which we purpose to maintain for the benefit of our licensees, and particularly for the use of the licensed theatres. After March 8th, 1909, as you have already been advised, the royalties of the various theatres will be adjusted so that many of the smaller theatres will only pay \$1 per week and in some cases the license fee will be less than that.

### NEW APPLICATIONS.

- 4    As fast as further applications are received from your customers we shall in all cases, where we decide to grant the application, advise you at once that a license has been issued. These communications will come to you in the form of lists, which should be at once added or attached to the original which we are sending you to-day so that you may at all times have a complete record before you of those theatres whom you may serve.

### NEW CUSTOMERS.

You may take on as a new customer, at any time, any theatre which has one of our license certificates, or which

has received advice from us that its application has been acted upon favorably and that the license will be issued. 1

You may also begin serving any theatre where the theatre's application has been forwarded to us with the license fee of \$10, but all such service must be accepted by you conditioned upon our licensing the theatre, and you must reserve the right in all such service contracts to discontinue the service immediately upon receiving notice from us either that the application has not been received or that the license will not be issued.

## NOTICE TO PATENTS COMPANY. 2

We call your attention to the provision in your license agreement with the Patents Company which requires you to notify us immediately upon taking on any new customers, and we require that notice from you for every customer added by you to the enclosed list of licensed customers. You may disregard former lists of customers sent to us, and taking the enclosed list as a starting point, keep as fully advised as to all other customers served by you, sending us such advises upon the blanks enclosed, an additional supply of which may be had from us by you at any time. At the close of each day's business, one of these lists should be prepared and mailed to us, containing the names of any customers whom you have begun to serve on that day. 3

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.

---

By Mr. GROSVENOR: 4

Q. Is the fee which the theatres pay today the same as that adopted in the beginning of 1909, that is, \$2.00 per week? A. Yes.

Q. And the same with all the theatres? A. Yes.

Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 12, which is as follows:



1

**Petitioner's Exhibit No. 12.**

Exchange Letter—Form 11.

**MOTION PICTURE PATENTS COMPANY**

10 Fifth Avenue

New York City.

Frank L. Dyer, President

H. N. Marvin, Vice-President

2

J. J. Kennedy, Treasurer

George F. Scull, Secretary

D. Macdonald,

General Manager.

Telephone

1352 Gramercy

February 10, 1909.

To Licensed Film Exchanges:

3

Dear Sirs:

**LICENSED CUSTOMERS.**

We wish to make it very clear to you that the list of your customers who have been licensed, which we furnished to you by mail on February 8th, was to be the beginning of an accurate list of your customers.

Disregard all previous lists and communications upon this subject sent by you to us. You are to retain the list furnished to you, and advise us immediately, upon the forms furnished, of all other customers whom you are serving, and of all discontinuances of any of the customers upon the list furnished by us on February 8th, and all discontinuances of any customers upon our subsequent lists. These advices should be mailed by you to us at the close of each day's business. You are to keep on file all of the lists furnished to you by us, and we shall keep on file and add to the copy of list which is in this office customers reported and customers discontinued.

## NEW CUSTOMERS.

1

You must observe very strictly our advices regarding taking on new customers or serving any customers whose names have not been furnished to you by us on the list of licensed theatres. With two classes of these customers you may begin service at any time without waiting to hear from us. They are:

1. Theatres which have already been licensed by us.

2. Theatres which have made applications to us for a license and which have in each case sent us \$10 which is the uniform license fee until March 8, 1909.

2

Unless a theatre is in one of these two classes, they may not receive service from any licensed Exchange after February 13, 1909.

All contracts for service either to old or new customers should be made subject to the condition that the Exchange may discontinue the service upon receiving notice from the Patents Company that the license to the theatre has been withdrawn, or that a license to the theatre will not be issued, or that the application claimed by the theatre to have been sent to the Patents Company has not been received.

3

## THE EXCHANGE LICENSE.

We advise that each Exchange should keep on file a copy of the license agreement entered into between the Exchange and the Patents Company. Every one having authority connected with each Exchange should be thoroughly familiar with the conditions of that license agreement. If a violation should occur, the Exchange holding the license will be held strictly to account and will be chargeable for actions of every one connected with its business. A careful reading of the license agreement will answer many questions which ordinarily come up in the regular course of the Exchange business, and if there are any matters which still remain in doubt we should be pleased to advise fully so that the Exchange may avoid making mistakes.

4

We will furnish copies of any printed matter which

1 we issue so that each Exchange may be fully supplied  
for its own use.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.

---

By Mr. GROSVENOR:

Q. Are these rules which are established in these circu-  
lars now enforced, namely, that before new customers are  
2 taken on, notice must be sent— A. (Interrupting) No.

Q. (Continuing) To the Patents Company? A. No.

Q. These rental exchanges have been superseded gener-  
ally by the General Film Company, have they not? A. The  
General Film Company is a rental exchange, the same as  
these others.

Q. Well, these others are no longer doing a licensed ex-  
change business with your company, are they? A. Which?

Q. Well, I show you this list of February 24, 1909, to be  
marked Petitioner's Exhibit No. 13.

3 Mr. GROSVENOR: I offer in evidence this paper, to  
be marked Petitioner's Exhibit No. 13, which is as  
follows:

**Petitioner's Exhibit No. 13.**

MOTION PICTURE PATENTS COMPANY,  
80 Fifth Avenue,  
New York.

4 February 24, 1909.

The Patents Company has licensed the following Manu-  
facturers and Importers whose present output is 18 reels  
per week:

Licensed Manufacturers and Importers.

AMERICAN MUTOSCOPE & BIOGRAPH COMPANY,



EDISON MANUFACTURING COMPANY,  
 ESSANAY FILM MANUFACTURING CO.,  
 KALEM COMPANY,  
 GEORGE KLEINE,  
 LUBIN MANUFACTURING CO.,  
 PATHE FRERES,  
 SELIG POLYSCOPE CO.,  
 VITAGRAPH COMPANY OF AMERICA.

1

### Licensed Film Exchanges.

The following Exchanges have been licensed, and at the present time are the only Exchanges that are authorized to handle licensed film:

2

Name	Address	City
Actograph Company,	50 Union Square,	New York City.
Actograph Company,	22 Third Street,	Troy N. Y.
Alamo Film Exchange,	405 Main Street,	Dallas, Texas.
Alamo Film Exchange,	304 Conroy Building,	San Antonio, Tex.
American Film Exchange,	645 Wabash Building,	Pittsburg, Pa.
American Film Service,	125 Monroe Street,	Chicago, Ill.
American Film Service,	158 North Main Street,	Memphis, Tenn.
American Vitagraph Co.,	116 Nassau Street,	New York, N. Y.
Buffalo Film Exchange,	131½ Genesee Street,	Buffalo, N. Y.
C. A. Calehuff,	Fourth and Green Streets,	Philadelphia, Pa.
Calumet Film Exchange,	Masonic Temple,	Chicago, Ill.
Eugene Cline & Co.,	59 Dearborn Street,	Chicago, Ill.
Eugene Cline,	268 South State Street,	Salt Lake City, Utah.
Clune Film Exchange,	727 South Main Street,	Los Angeles, Cal.
Colorado Film Exchange Co.,	320 Charles Building,	Denver, Colo.
Columbia Film Exchange,	414 Ferguson Building,	Pittsburg, Pa.
O. T. Crawford Film Exchange Co.,	Gayety Theatre Building,	St. Louis, Mo.

3

4

- 1 O. T. Crawford Film Exchange Co., Crawford Theatre,  
El Paso, Texas.  
O. T. Crawford Film Exchange Co., Hopkins Theatre,  
Louisville, Ky.  
O. T. Crawford Film Exchange Co., Shubert Theatre,  
New Orleans, La.  
Harry Davis, 347 Fifth Avenue, Pittsburg, Pa.  
Harry Davis, , Buffalo, N. Y.  
Harry Davis, 1314 Arch Street, Philadelphia, Pa.  
Denver Film Exchange, 713 Lincoln Avenue, Denver,  
Colo.
- 2 Dixie Film Company, 620 Commercial Place, New  
Orleans, La.  
Duquesne Amusement Supply Co., 104-5 Bakewell Build-  
ing, Pittsburg, Pa.  
Duquesne Amusement Supply Co., 235 Monticello Arcade  
Building, Norfolk, Va.  
Edison Display Co., 1116 Third Avenue, Seattle, Wash.  
Edison Display Co., 165½ Fourth Street, Portland, Ore.  
Electric Theatre Supply Co., 47 North 10th Street, Phil-  
adelphia, Pa.  
Greater New York Film Rental Co., 24 Union Square,  
New York City.
- 3 C. J. Hite Company, Monadnock Block, Chicago, Ill.  
Howard Moving Picture Co., 564 Washington Street,  
Boston, Mass.  
Imperial Film Exchange, 44 West 28th Street, New York  
City.  
Imperial Film Exchange, 299 River Street, Troy, N. Y.  
Imperial Film Exchange, 803 Ninth Street, N. W., Wash-  
ington, D. C.  
Imported Film & Supply Co., 708 Union Street, New  
Orleans, La.
- 4 Kent Film Service, 218 Nicholas Building, Toledo, Ohio.  
Kleine Optical Company, 2008½ Third Avenue, Birming-  
ham, Ala.  
Kleine Optical Company, 657 Washington Street, Boston,  
Mass.  
Kleine Optical Company, 52 State Street, Chicago, Ill.  
Kleine Optical Company, 302 Boston Building, Denver,  
Colo.

Kleine Optical Company, 229 Commercial Building, Des Moines, Iowa. 1

Kleine Optical Company, 214 Traction Building, Indianapolis, Ind.

Kleine Optical Company of California, 369 Pacific Electric Building, Los Angeles, Cal.

Kleine Optical Company, 662 Sixth Avenue, New York, N. Y.

Kleine Optical Company, 309 Melhorn Building, Seattle, Wash.

Kleine Optical Company of Missouri, 523 Commercial Building, St, Louis, Mo. 2

Laemmle Film Service, 196 Lake Street, Chicago Ill.

Laemmle Film Service, Main and Sixth Streets, Evansville, Ind.

Laemmle Film Service, 78 South Front Street, Memphis, Tenn.

Laemmle Film Service, 1121-23 Lumber Exchange, Minneapolis, Minn.

Laemmle Film Service, 800 Brandeis Block, Omaha, Neb.

Laemmle Film Service, 214, 215, 216 Wells Fargo Building, Portland, Ore. 3

Laemmle Film Service, 151 Main Street, Salt Lake City, Utah.

Lake Shore Film & Supply Co., 314 Superior Avenue, N. E., Cleveland, Ohio.

H. Lieber Co., 24 West Washington Street, Indianapolis, Ind.

Lubin Film Service, 21 South 8th Street, Philadelphia, Pa.

Lubin Film Service, 510 Paul-Gale-Greenwood Building, Norfolk, Va.

Lubin Film Service, 140 West 5th Street, Cincinnati, Ohio. 4

Michigan Film & Supply Co., 1106 Union Trust Building, Detroit, Mich.

Miles Bros, Inc., 259 Sixth Avenue, New York, N. Y.

Miles Bros., Inc., Washington and Dover Streets, Boston, Mass.

Miles Bros., Inc., 790 Turk Street, San Francisco, Cal.



- 1 Mitchell Film Exchange, 1201½ Main Street, Little Rock, Ark.  
Monarch Film Exchange, 201 Thompson Building, Oklahoma City, Okla.  
Montana Film Exchange, 41 North Main Street, Butte, Montana.  
Morton Film Exchange, 107 Sixth Street, Portland, Ore.  
National Film Company, 100 Griswold Street, Detroit, Mich.  
National Film Renting Co., , Spokane, Wash.  
Novelty Moving Picture Co., 418 Turk Street, San Francisco, Cal.
- 2 Ohio Film Exchange, 20 East Broad Street, Columbus, Ohio.  
Pearce & Scheck, 223 North Calvert Street, Baltimore, Md.  
Pennsylvania Film Exchange, 403 Lewis Block, Pittsburgh, Pa.  
People's Film Exchange, 126 University Place, New York City.  
Philadelphia Film Exchange, 1229 North 7th Street, Philadelphia, Pa.
- 3 Pittsburgh Calcium Light & Film Co., 121 Fourth Avenue, Pittsburgh, Pa.  
Pittsburg Calcium Light & Film Co., Wilkesbarre, Pa.  
Pittsburg Calcium Light & Film Co., 501-503 Central Building, Rochester, N. Y.  
Pittsburg Calcium Light & Film Co., Neave Building, Cincinnati, Ohio.  
Pittsburg Calcium Light & Film Co., 421 Walnut Street, Des Moines, Iowa.  
Pittsburg Calcium Light & Film Co., 60-62 Brownell Block, Lincoln, Neb.
- 4 Schiller Film Exchange, 103 Randolph Street, Chicago, Ill.  
Southern Film Exchange, 1822 Fourth Avenue, Birmingham, Ala.  
Southern Film Exchange, 148 West 5th Street, Cincinnati, Ohio.  
George K. Spoor & Co., 62 North Clark Street, Chicago, Ill.  
Standard Film Exchange, 79 Dearborn Street, Chicago, Ill.

Star Film Exchange, 120 Randolph Street, Chicago, Ill. 1  
Superior Film Supply Co., 621 Nasby Building, Toledo,  
Ohio.

Swaab Film Service Co., 338 Spruce Street, Philadel-  
phia, Pa.

Wm. H. Swanson & Co., 160 Lake Street, Chicago, Ill.

Wm. H. Swanson Co. of Omaha, 405 Karbach Block,  
Omaha, Neb.

Wm. H. Swanson St. Louis Film Co., 200 North 7th  
Street, St. Louis, Mo.

The Talking Machine Co., 97 Main Street, East Roches- 2  
ter, N. Y.

Tally's Film Exchange, 554 South Broadway, Los  
Angeles, Cal.

Theatre Film Supply Co., 202 South Tryon Street, Char-  
lotte, N. C.

Theatre Film Supply Co., 2007 Second Avenue, Birming-  
ham, Ala.

Theatre Film Service Co., 85 Dearborn Street, Chicago,  
Ill.

Theatre Film Service Co., 1038 Golden Gate Avenue,  
San Francisco, Cal.

Trent & Wilson 63 East 3rd Street, Salt Lake City, Utah. 3

20th Century Optiscope Co., 59 Dearborn Street, Chicago,  
Ill.

20th Century Optiscope Co., Shukert Building, Kansas  
City, Mo.

20th Century Optiscope Co., 408 Eccles Building, Ogden,  
Utah.

Turner & Dahnken, 1650 Ellis Street, San Francisco,  
Cal.

Twin City Calcium and Stereopticon Co., 709 Hennepin  
Avenue, Minneapolis, Minn.

United Film Exchange, 717 Superior Avenue, N. E., 4  
Cleveland, O.

United States Film Exchange, 132 Lake Street, Chicago,  
Ill.

Vaudette Film Exchange Co., 103 Monroe Street, Grand  
Rapids, Mich.

P. L. Waters, 41 East 21st Street, New York City.

Alfred Weiss' Film Exchange, 219 Sixth Avenue, New  
York City

1 Western Film Exchange, 949 Century Building, St. Louis, Mo.

Western Film Exchange, 307 Grand Avenue, Milwaukee, Wis.

Western Film Exchange. 201 Miners' Bank Building, Joplin, Mo.

Wonderland Film Exchange, Seventh Street and Liberty Avenue, Pittsburg, Pa.

Wheelan-Loper Film Co., 339 Main Street, Dallas, Texas.

Yale Film Renting Co., 622 Main Street, Kansas City, Mo.

2

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By Mr. GROSVENOR:

Q. This Exhibit No. 13, dated February 24th, 1909, was a notice sent out by you giving what were the Licensed Film Exchanges, is that not correct? A. Yes.

Q. Are there any on this list, comprising 116 exchanges, that are licensed by the Patents Company today? A. No. They have been superseded by branches of the General Film Company.

3 Q. That is to say, the General Film Company succeeded to the business of nearly all of these companies? A. Well, the General Film Company is serving a majority of the customers that were served by those exchanges when they were doing business.

Q. Well, that is not the question I asked. The General Film Company is now doing the business which was done by the major part of these 116 exchanges? A. Well, if my former answer is not a reply, then I will say it was not doing that business.

4 Q. How many of these 116 exchanges were acquired by the General Film Company? A. I believe they acquired property from 57 different exchanges.

Q. And the General Film Company was organized, was it not, by these licensed manufacturers, that is, the Patents Company licensees? A. Yes.

Q. And the Patents Company also licensed the manufacturers of moving picture machines, did it not? A. It licensed a number of such manufacturers.

Q. Is this the list, contained on this circular of yours of February 27, 1909, of the manufacturers of projecting ma-



chines licensed at that time (handing paper to witness)? 1  
 A. This is a list of the licensees under projecting machine patents licensed for the purpose of manufacturing machines, but not all of the people on this list were engaged in the manufacture of machines at that time, and some of them had not at any time been engaged in the manufacture of machines.

Q. That is a list of all whom you licensed to manufacture projecting machines? A. Yes.

Mr. GROSVENOR: I offer that list in evidence.

The list dated February 27, 1909, is marked Petitioner's Exhibit No. 14, and is as follows: 2

### **Petitioner's Exhibit No. 14.**

#### **LICENSED MANUFACTURERS OF MOVING PICTURE MACHINES.**

American Moving Picture Machine Co.,  
 Armat Moving Picture Machine Co.,  
 Edengraph Manufacturing Co., 3  
 Edison Manufacturing Company,  
 Enterprise Optical Company,  
 Lubin Manufacturing Co.,  
 Pathe Freres,  
 Nicholas Power Company,  
 Eberhard Schneider,  
 Selig Polyscope Company,  
 George K. Spoor Company,  
 Vitagraph Company of America,  
 Gaumont Company. 4

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Mr. GROSVENOR: I offer in evidence this paper to be marked Petitioner's Exhibit No. 15, reading as follows:

1

**Petitioner's Exhibit No. 15.**

Exchange Bulletin—No. 1.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

February 26, 1909.

2

**CANCELLATION NOTICES.**

We advised all of the licensed exchanges by wire to-day as follows:

“On and after March 1st to reduce or cancel a standing order fourteen days' notice must be given.”

3

This action of the manufacturers, restoring the conditions as to the notice which must be given to cancel or reduce an order, was taken at a meeting held yesterday at the offices of the Patents Company.

**EXCHANGE LICENSES TO BE CANCELLED.**

The Patents Company to-day notified the following Exchanges that on and after March 15, 1909, the license agreement they had entered into with this Company would be terminated:

4

Philadelphia Film Exchange, 1229 N. 7th St., Philadelphia, Pa.

Wm. H. Swanson & Co., 160 Lake St., Chicago, Ill.

Wm. H. Swanson & Co., of Omaha, 405 Karbach Block, Omaha, Neb.

Wm. H. Swanson & Co., 200 N. 7th St., St. Louis, Mo.

**EXCHANGE CONTRACT WITH EXHIBITORS.**

All contracts made by Exchanges with exhibitors must

be subject to the following conditions, which should be  
endorsed on the contracts: 1

“On and after this date this contract is conditioned upon the exhibitor remaining a licensee of the Motion Picture Patents Company, and we reserve the right to cancel this contract upon receiving notice from the Motion Picture Patents Company that the license covering the house of the exhibitor has been revoked.”

## ROYALTIES.

2

The Patents Company has fixed March 8th to April 1st, as the next royalty period, during which time the royalties for licensed theatres will be at the rate of \$2.00 per week, making a total of \$6.00, to cover the period from March 8th to April 1st, 1909.

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By Mr. GROSVENOR:

Q. Just read this one please (handing Exhibit No. 15  
to witness)? A. (Witness reads.) 3

Another bulletin is marked Petitioner's Exhibit No. 16, and is as follows:

### **Petitioner's Exhibit No. 16.**

Exchange Bulletin—No. 2.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

March 3, 1909.

4

## LICENSED EXHIBITORS.

We are sending you enclosed a list of your licensed customers and also a list of licensed customers in your vicinity not yet credited to any particular Exchange.



- 1 If you are serving any of the licensed exhibitors upon the second list mentioned, place your exchange number opposite such exhibitors and return the list to us at once. Also furnish us by return mail with a list of any customers you are serving who do not appear upon either of the two lists enclosed. During the present month and until such time as our records are brought up-to-date, every Exchange must keep on file at all times a complete list of customers which list should be arranged in the same manner as the list furnished by us, alphabetically, according to the state, town and street address.

2

### LIST OF CUSTOMERS—MARCH 8, 1909.

3

At the close of business on Monday, March 8th, every licensed Exchange must furnish to the Patents Company a complete list of the customers being served at that time. This list must be arranged alphabetically according to location—state, town or city and then street address, in the same form as the list which the Patents Company furnishes to you enclosed. These lists will be a final check upon the records in this office and you will be notified of any differences at once.

### CURRENT ROYALTIES.

4

All licensed Exchanges will receive notice immediately after March 8th of their licensed customers if any, who have not paid the \$6.00 royalty due upon that day, so that the service to such customers may be discontinued immediately. All service to licensed exhibitors must be subject to the exhibitor paying at the stated periods the royalties required by the Patents Company, and every licensed Exchange must remain free to discontinue promptly upon notice from the Patents Company that the royalties have not been paid.

### CORRESPONDENCE.

Up to the present time it has been impossible for the Patents Company to keep pace with the numerous communications received from both the licensed Exchanges

and licensed exhibitors, but we wish to assure you that there has not been the slightest intention to disregard correspondence. However, in a few days, the Exchange correspondence and within a week the exhibitors correspondence, will be covered, after which time we will have a sufficient organization to promptly reply to all correspondence. 1

### MOTION PICTURE PATENTS COMPANY.

---

By Mr. GROSVENOR: 2

Q. Exhibit No. 15, being dated February 26, contains the following: "The Patents Company today notified the following Exchanges that on and after March 15, 1909, the license agreement they had entered into with this company would be terminated," with the following names: "Philadelphia Film Exchange; Wm. H. Swanson & Co. of Chicago; Wm. H. Swanson & Co., of Omaha; Wm. H. Swanson & Co. of St. Louis." This Exhibit was a circular or bulletin which was sent out to all the rental exchanges. Is not that correct? A. I believe it was, yes. 3

Q. When the Patents Company cancelled the license of an Exchange, it was customary for it to send a notice to all the other Exchanges of the cancellation of the Exchange? A. Yes.

Q. And it was also customary, was it not, for the Patents Company to send a notice to all of the customers of the Exchange whose license was cancelled, that the license of that Exchange had been cancelled? A. It was customary to notify the customers of the Exchange when the license of the Exchange was cancelled, so that the customer could be advised and look to a proper source to obtain licensed film. 4

Q. So that in this case, you not only sent all the rental Exchanges notice of Swanson & Company's license having been cancelled, but you also sent Swanson & Company's customers notice of that fact? A. I cannot say definitely as to that case, because that was not always done, but it was frequently done.

1       Q. It was the general rule?   A. It was common practice

Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 17, which is as follows:

**Petitioner's Exhibit No. 17.**

Exchange Bulletin—No. 3.

2               MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

March 20, 1909.

**ROYALTIES FROM EXHIBITORS.**

3       The attention of all licensed Exchanges is called to Exhibitors' Bulletin No. 3, a copy of which is enclosed with this Bulletin.

On and after April 12th licensed Exchanges must not supply service to any exhibitor unless they then have in their possession a duplicate copy of a receipt from the Patents Company for the license fee of the exhibitor for the period ending May 1, 1909.

4       No statement, explanation or excuse on the part of the exhibitor may be accepted by a licensed Exchange as authority for the supply of film to an exhibitor whose duplicate receipt the Exchange does not hold, except the surrender to the Exchange by the exhibitor of the original receipt which must in that case be immediately forwarded to the Patents Company. This exception is made only to guard against the possible loss of receipt in transmission through the mails. If neither the exhibitor nor the Exchange has received a receipt on April 12th, the service must be discontinued on that date.

Licensed Exchanges found to supply films to unlicensed exhibition place or places in arrears for license fees will be subject to a fine, or cancellation of license, at the discretion of the Patents Company.



## APPLICATIONS FROM UNLICENSED THEATRES. 1

From the date of this announcement, all applications for licenses from unlicensed theatres will be governed by the following two rules, and service from a licensed Rental Exchange may only be obtained by such applicants upon the conditions set forth below:

(1) If Motion Pictures have not been shown in the theatre within four months prior to date of application, service must be refused until the Rental Exchange has received notice from the Patents Company that a license has been granted. In this case \$10 must accompany the application, which, if the license is granted, applies on the royalties of the theatre from the date service begins. Where the application is refused, the \$10 is returned. 2

(2) If Motion Pictures have been shown in the theatre four months prior to date of application, the Patents Company must receive a signed and dated application for license, together with a fee of \$10 to cover the license fee for the first five weeks from the date of the application, and the Exchange may then supply service from the date the application is mailed to the Patents Company. The applications will be finally acted upon by the Patents Company as rapidly as possible. If a license is issued, the \$10 applies upon the royalties of the theatre from the date service began. If the application is refused, the entire fee will be returned, and the Exchange notified to discontinue service. 3 4

## RELEASE DAY.

The Patents Company will impose a penalty of not less than \$100 or the revocation of the license of any Exchange for the violation of the release day rule. This rule provides that no licensed film shall be shown, handled or forwarded by a licensed Exchange until 8 A. M. of the day upon which the film is released by the Manufacturer.

1

**EXTRA TITLES.**

To Exchanges who may place separate standing orders for titles, the Manufacturers will hereafter supply extra titles five feet in length for twenty-five cents per title, the titles to be shipped with the film.

**NEW OFFICE AT BALTIMORE, MD.**

The Patents Company has licensed a new office to be conducted at Baltimore, Md., by Miles Bros., Inc.

2

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 18, which is as follows:

**Petitioner's Exhibit No. 18.**

Exchange Bulletin—No. 5.

3

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

April 7, 1909.

**EXHIBITORS' ROYALTIES.**

4

We are enclosing a copy of Exhibitors' Bulletin, No. 4, which we mailed to exhibitors to-day.

From this Bulletin you will learn that it is our intention to have the rental Exchanges act as our agents to collect exhibitors' royalties on and after May 3, 1909. This arrangement will be more convenient to exhibitors and will enable Exchanges at all times to know whether an exhibitor is licensed or is not licensed.

The Exchanges are representatives selected by this Company and by the Manufacturers for the distribution of licensed film. The business relations between the Ex-

changes and the Manufacturers and this Company are governed by the terms of the license agreement between the Exchanges and this Company. 1

Exchanges that comply with the conditions of the license agreement will continue to have our co-operation and we will promptly terminate our relations with such Exchanges as violate the terms of their license or otherwise show that they do not consider their interests and ours as being mutual.

On and after Monday, May 3, 1909, include in each of your bills for weekly service to exhibitors, an item of \$2 for exhibitor's royalty in advance for the current week. Each Exchange shall forward to this Company, on Tuesday of each week, the royalty for that week of every exhibitor that is receiving service from the Exchange. 2

Send with the remittance of May 4th, the names and locations of the theatres for which royalties are forwarded, and send with your remittance on each succeeding Tuesday a list showing the names and locations of new customers, and the names and locations of theatres that have discontinued your service.

This Company will promptly mail to exhibitors receipts for the royalties that are forwarded by Exchanges. 3

The following conditions relating to theatres not licensed will govern applications from such theatres for licensed service:

(a) If motion pictures have been shown in a theatre within five months, the Exchange may send to the Patents Company an application for a license for the theatre, and \$2 to cover the royalty for one week. The Exchange may supply service as soon as the royalty and application for license are mailed. If the Patents Company refuses to grant the license, the Exchange will be notified by the Patents Company to discontinue service. 4

(b) If motion pictures have not been shown in the theatre within five months, the application, without any fee, should be mailed to the Patents Company, but service shall not be supplied unless the



1 Exchange is notified by the Patents Company that  
a license has been granted to the theatre.

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By Mr. GROSVENOR:

Q. You might read that one (indicating Exhibit No. 18). A. (Witness reads Exhibit No. 18.)

2 Q. Now, referring to Exhibit No. 18, being a circular  
sent out to the Exchanges, dated April 7, 1909, you state:  
"From this Bulletin you will learn that it is our intention to have the rental Exchanges act as our agents to collect exhibitors' royalties on and after May 3, 1909." By the "exhibitors' royalties" there, you refer to this \$2 a week from the different theatres? A. Yes.

Q. Thereafter, then it was the custom for these one hundred odd rental Exchanges to collect those royalties, and then turn them over to you? A. Yes.

3 Q. Did you pay anything or allow anything to the rental agencies for acting as your collection agencies? A.  
That change in the collection of royalties was made in deference to solicitation on the part of numerous Exchanges who considered that it would be more convenient for them, and for their customers, to have the collections made by the Exchange, thus saving time and delay in transmitting information, and enabling them to deal promptly with applicants, and, in deference to their requests, we changed the system so as to have them collect.

4 Q. Did you pay these rental agencies anything for acting as collecting agencies for you? A. No, we did not. It was a matter of accommodation to them.

Q. They were not allowed to furnish films to any theatre which was in arrears in paying its \$2 a week charge? A. That was a provision of their license.

Q. That is, they were not allowed to furnish films—  
A. (Interrupting): They were not to supply—

Q. (Interrupting): —when the theatre was in arrears?  
A. Not to supply films for use on projecting machines, the royalty for which was in arrears.

Q. And that was true whether the projecting machines were sold prior to February, 1909, or after that date? A. It

was true of all infringing projecting machines irrespective of when they were sold. 1

Q. You apply the term "infringing" to all the machines which had been sold prior to 1909? A. All machines sold prior to that time infringed our patents.

Q. Had the exhibitors been so advised when they bought them? A. I don't know. They had been frequently notified through the press of the country of the existence of the patents, and the suits under these various patents were matters of common knowledge, and, presumably, they were acquainted with the existence of those suits, and the claims of the owners of the patents at the time they bought the projecting machines from those who were infringing the patents. 2

Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 19, which is as follows:

### **Petitioner's Exhibit No. 19.**

Exchange Bulletin—No. 8.

MOTION PICTURE PATENTS COMPANY 3

80 Fifth Avenue

New York City

May 15, 1909.

### **EXCHANGE LICENSES CANCELLED.**

The Patents Company has cancelled the following Exchange license agreements for violations: 4

American Film Exchange, License for Pittsburg, Pa.

Schiller Film Exchange, License for Chicago, Ill.

Star Film Exchange, License for Chicago, Ill.

United States Film Exchange, License for Chicago, Ill.

The Patents Company has cancelled the following Exchange license agreements for the failure of the Exchanges to lease the quantity of film that Exchanges are required

- 1 to lease monthly under the terms of the Exchange License Agreements:

American Film Exchange, License for Memphis, Tenn.

Harry Davis, License for Pittsburg, Pa.

Harry Davis, License for Philadelphia, Pa.

Harry Davis, License for Buffalo, N. Y.

### EXCHANGING FILM.

- 2 Recently complaints have been made to the Patents Company that film leased by some Exchanges is loaned by those Exchanges to their branch offices or to other Exchanges.

Such lending or exchanging of film is a violation of the Exchange License Agreement, and Exchanges found guilty of this practice, after this notice, will be required to show cause to the Patents Company why their licenses should not be cancelled.

### EXCHANGES MAY BE LICENSED FOR EXHIBITION PURPOSES.

3

Upon application, the Patents Company will issue a license to any Exchange, under which the Exchange may give exhibitions of motion pictures not to exceed seven exhibitions per week.

This special license can be used to cover motion picture exhibitions which are given regularly once each week, and is also intended to meet the demands upon Exchanges to furnish occasionally motion picture exhibitions for churches, clubs and various kinds of entertainments.

4

The royalty for such a license is \$2.00 per week.

### NEW APPLICATIONS.

From this date, Exchanges may begin service to an unlicensed theatre at any time, by remitting to the Patents Company on or before the day on which service begins, \$2.00 with the application, of the exhibitor for a license, and by remitting \$2.00 on Tuesday of each week until a license is issued or refused.



All such exhibitors will be considered to be temporary licensees until their applications for licenses have been acted upon. If an application for a license should, in the interest of other licenses be refused, the Exchange supplying service will be notified and shall discontinue service at the end of the week in which it receives such notice. 1

**MOTION PICTURE PATENTS COMPANY.**

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Mr. GROSVENOR: I offer in evidence this paper to be marked Petitioner's Exhibit No. 20, which is as follows: 2

**Petitioner's Exhibit No. 20.**

Exchange Bulletin—No. 10.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

3

July 27, 1909.

**EXCHANGING FILM.**

The attention of Exchanges is directed to the following extract from Bulletin No. 8, issued May 15, 1909:

"Recently complaints have been made to the Patents Company that film leased by some Exchanges is loaned by those Exchanges to their branch offices or to other Exchanges. 4

"Such lending or exchanging of film is a violation of the Exchange License Agreement, and Exchanges found guilty of this practice, after this notice, will be required to show cause to the Patents Company why their licenses should not be cancelled."



them to report new customers to us without delay.

1

They were also notified that we would require them to collect the exhibitor's royalty of two dollars a week from every exhibitor that they served, and to forward all such royalties to us every week.

The attention of exchanges is called to the fact that failure to comply with these requirements, regardless of excuses and explanations, will result in prompt action on our part, similar to our action in the cases of the exchanges named above.

Any exchange that is in arrears for the royalty payments of any customers as the result of errors or negligence of employees or other cause, should promptly send us the amount due.

2

Exchanges will also be held strictly accountable for sub-renting or other unauthorized use of films that are entrusted to them.

MOTION PICTURE PATENTS COMPANY.

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 22, which is as follows:

3

**Petitioner's Exhibit No. 22.**

Exchange Bulletin—No. 14.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

4

August 23, 1909.

For violating the release-day rule, by releasing one film before release day, The Twin City Calcium & Stereopticon Company, of Minneapolis, Minn., has been fined one hundred dollars.

For violating the release-day rule, by releasing more than one film before release day, The Actograph Company,



1 of Troy, N. Y., has been fined five hundred dollars, has been required to dismiss and to agree to not again employ the manager of its Troy exchange, and has also been required to stop serving the exhibitor to whom it supplied the film.

MOTION PICTURE PATENTS COMPANY.

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2 Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 23, which is as follows:

**Petitioner's Exhibit No. 23.**

Exchange Bulletin—No. 16.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

3 September 7, 1909.

For the convenience of exchanges we have prepared an improved form of notice of discontinuance of service to exhibitors, and we will mail, under separate cover, a supply for your use.

Please report promptly, on one of these forms, each customer who discontinues your service, and supply the information that is called for by the questions that are printed on the forms.

MOTION PICTURE PATENTS COMPANY.

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4 Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 24, which is as follows:

**Petitioner's Exhibit No. 24.**

1

Exchange Bulletin—No. 18.

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

December 4, 1909.

It has come to our notice, that a number of licensed exchanges are laboring under the mistaken belief, that unless they lease certain films or buy projecting machines from certain of the Licensed Manufacturers there is danger of competing exchanges being started in their immediate locality, and we understand that this feeling also exists to a limited extent among some of the licensed theatres who may believe, that by using the films, and machines, of certain makes they will receive similar protection. It would seem hardly necessary to dignify any such impressions with a formal statement, but nevertheless, since this feeling exists, we take the occasion to say:

2

All licensed films are leased on their merits. The same is true of licensed projecting machines. The good of the business requires that licensed exchanges and licensed theatres shall be allowed to freely use the licensed films and machines they prefer. No film manufacturer nor machine manufacturer has the slightest power to force his particular products on any exchange or theatre which may not wish to use them. If any film manufacturer or machine manufacturer, or any employee thereof, makes any representations to the contrary, we request that the matter be immediately communicated to us and it will be promptly investigated; and in the making of these investigations, the film exchange or theatre furnishing us the information, will be fully protected.

3

4

So far as concerns the matter of establishing new exchanges, we reiterate our policy that where the business in a particular locality is being satisfactorily handled by the exchange or the exchanges located there, we will not appoint a new exchange in that locality. We consider the appointing of new exchanges only when the existing

- 1 exchange fails to secure the business that the location war-  
rants, but in every case the matter of licensing a new  
exchange is decided on its merits by all the Manufacturers,  
and utterly regardless of the fact that the old exchange  
does or does not lease certain makes of films, or buy  
certain makes of machines, or that the proposed new ex-  
change offers to lease certain makes of films or buy certain  
makes of machines. We cannot make the fact too plain  
that so far as licensed films and machines are concerned,  
exchanges and theatres are free to exercise their own  
judgment and to use the films and machines that they  
2 prefer.

**MOTION PICTURE PATENTS COMPANY.**

Mr. GROSVENOR: I offer in evidence this paper, to be  
marked Petitioner's Exhibit No. 25, which is as fol-  
lows:

**Petitioner's Exhibit No. 25.**

Exchange Bulletin—No. 22.

3 **MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

April 19, 1910.

The attention of Exchanges is again directed to the im-  
portance of observing the conditions under which licensed  
film is supplied by the Manufacturers.

- 4 The Licenses of the following Exchanges have been can-  
celled for supplying licensed film to exhibitors whose roy-  
alties have not been forwarded to this Company, for exchang-  
ing film, and for failure to take proper precautions to prevent  
licensed film from passing into the hands of unlicensed per-  
sons:

Miles Bros., Inc. at Baltimore, Md.

Imperial Film Exchange at New York, Troy, N. Y., Wash-  
ington, D. C.

**MOTION PICTURE PATENTS COMPANY.**



Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 26, which is as follows: 1

**Petitioner's Exhibit No. 26.**

Exchange Bulletin—No. 23.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

April 23, 1910. 2

The Licenses of the following Exchanges have been cancelled for violating the terms of their License Agreement relating to the use of licensed film in unlicensed projecting machines, and the maintaining of an unlicensed exchange:

Miles Bros., Inc., New York City.

Miles Bros., Inc., Boston, Mass.

Mr. Tom Moore, former manager of the Imperial Film Exchange of Washington, D. C., has been granted a License to lease licensed film. The new Exchange will be known as Moore's Film Exchange and will be located at 434 Ninth St., N. W., Washington, D. C. 3

MOTION PICTURE PATENTS COMPANY.

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 27, which is as follows: 4

1

**Petitioner's Exhibit No. 27.**

Exchange Bulletin—No. 25.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

July 19, 1910.

2

The Licenses of the following Exchanges have been cancelled for violating the terms of their License Agreement with us relating to the use of licensed film :

O. T. Crawford Film Exchange Co., St. Louis, Mo.

Western Film Exchange, St. Louis, Mo.

Kay-Tee Film Exchange, Los Angeles, Cal.

3

The Yale Film Exchange Company has been granted a License to establish and conduct a film Exchange in St. Louis, Mo. The Yale Film Exchange in St. Louis will be located at 604 Chestnut Street and this Exchange will be prepared to supply service to exhibitors on and after Monday, July 25th, 1910.

**MOTION PICTURE PATENTS COMPANY.**

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 28, which is as follows:

4

**Petitioner's Exhibit No. 28.**

Exchange Bulletin—No. 26.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

September 14, 1910.

The License of the Colorado Film Exchange Company,

Denver, Colorado, has been cancelled for violating the terms and conditions of its Exchange License. 1

MOTION PICTURE PATENTS CO.

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 29, which is as follows:

**Petitioner's Exhibit No. 29.**

2

Exchange Bulletin—No. 28.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

November 21, 1910.

The Licenses of the following Exchanges have been cancelled: 3

H. & H. Film Service, Chicago, Ill.

Western Film Exchange, Joplin, Mo.

Western Film Exchange, Milwaukee, Wis.

For violating the release day rule by releasing film before release day, the General Film Company of Little Rock, Ark., has been fined five hundred dollars.

MOTION PICTURE PATENTS CO.

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4

Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 30, which is as follows:



1

**Petitioner's Exhibit No. 30.**

Exchange Bulletin—No. 29.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

November 22, 1910.

2

The General Film Company has purchased the S. Nye Bass Film Exchange, located at 823 Union Street, New Orleans, La., and will conduct a licensed exchange at that address.

MOTION PICTURE PATENTS CO.

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 31, which is as follows:

3

**Petitioner's Exhibit No. 31.**

Exchange Bulletin—No. 30.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

January 3, 1911.

4

The License of Lewis M. Swaab, Philadelphia, Pennsylvania, has been cancelled for violating the terms and conditions of his Exchange License.

MOTION PICTURE PATENTS CO.

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 32, which is as follows:

**Petitioner's Exhibit No. 32**

1

Exchange Bulletin—No. 32.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

June 30th, 1911.

Pursuant to paragraph 20 of your License Agreement, you are hereby notified that the following scale of minimum prices for leasing motion pictures has been adopted to apply to all motion pictures of which the release date is on or after July 17, 1911, and to all motion pictures leased on or after that date.

2

**PRICE SCHEDULE****Non-Inflammable Film.**

List .....14 cents per running foot  
 Standing Order ....12 “ “ “ “

3

**ORDINARY FILM**

List .....13 cents per running foot  
 Standing Order ....11 “ “ “ “  
 Topical Pictures ... 9 “ net per running foot.  
 Films leased between  
     two and four  
     months after re-  
     lease date ..... 9 “ per running foot.  
 Films leased between  
     four and six  
     months after re-  
     lease date ..... 7 “ net per running foot.  
 Films leased between  
     six and twelve  
     months after re-  
     lease date ..... 5 “ “ “ “ “  
 Films leased over  
     twelve months ..any price net.

4

- 1       A rebate of 10 per cent. will be allowed on all of the above prices except on the 9 cent price for Topical Pictures and on the 7 cent price and lower prices which are net; said rebates to be due and payable between the 1st and 15th days of each of the months of March, May, July, September, November and January, on all films leased during the two months preceding each said period, provided all the terms and conditions of the License Agreement have been faithfully observed.

MOTION PICTURE PATENTS COMPANY.

By H. N. Marvin,  
Vice-President.

2

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Mr. GROSVENOR: I offer in evidence this paper, to be marked Petitioner's Exhibit No. 33, which is as follows:

**Petitioner's Exhibit No. 33**

Exchange Bulletin—No. 33.

- 3       MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

September 13th, 1911.

- 4       Pursuant to Paragraph 20 of your License Agreement, you are hereby notified that the conditions of your License have been changed, by the cancellation of Paragraph 3 thereof and the substitution therefor of the following:

“3” “The Licensee shall not sell nor exhibit licensed motion pictures obtained from any Licensed Manufacturer or Importer, either in the United States or elsewhere, but shall only sub-let such licensed motion pictures and only to exhibitors who shall exclusively exhibit licensed motion pictures, but in no case shall the exhibitor be permitted to sell or sub-let or otherwise dispose of said licensed motion pictures.”



This change in the conditions of your License Agreement will become effective on the First day of October, 1911. 1

MOTION PICTURE PATENTS COMPANY.

By H. N. Marvin,  
Vice-President.

(Exhibits 19 to 33 inclusive are handed to the witness and read by him.)

By Mr. GROSVENOR: 2

Q. This Exhibit No. 19 (*supra*, p. 69), being the Exchange Bulletin dated May 15th, shows the names of eight exchanges whose licenses, the exhibit states, were cancelled. Who passes on these questions of cancellation by the Patents Company? A. The Directors.

Q. And who were the Directors? A. Mr. Dyer, Mr. Kennedy, Mr. Scull and myself.

Q. Any other individuals? A. No.

Q. Mr. MacDonald? A. No.

Q. What record was kept of the cancellation other than the mere fact that the license was cancelled? A. The records contained in the Bulletin and the letter of cancellation. 3

Q. I mean, upon what papers did you act? Upon what evidence did you act in cancelling these licenses? A. Usually correspondence.

Q. Now, has the correspondence been preserved in respect to these different cancellations? A. I think no doubt it has. Sometimes that was supplemented by the verbal statements of people knowing the facts in connection with the Exchange.

Q. In this same exhibit under the paragraph headed "New Applications," it refers to applications of exhibitors and states "If an application for a license should, in the interests of other licensees be refused, the exchange supplying service will be notified, and shall discontinue service at the end of the week in which it receives such notice." Now, who passed upon these questions of licenses to exhibitors? The same Board of Directors? A. I usually passed upon them. They were not generally taken up with the full Board. 4

1 Q. Without consultation with the Board? A. Occasionally with consultation. Usually without it.

Q. Have you preserved a record of that action, that is, of what action was taken by you in connection with these several applications for new licenses? A. They would appear in the correspondence, I think, which I believe is all preserved.

2 Q. Exhibit No. 20 states (*supra*, p. 72), "on and after August 10th, no two Exchanges will be permitted to serve the same exhibitor during the same period. Each Exchange must give only complete service to any exhibitor." What is the purpose of that provision? A. That was the enunciation of the former general practice among the better class of Exchanges that had commonly existed. Since the exchange business started, exchanges found it was undesirable for two Exchanges to attempt to supply the same customer at the same time. A conflict of service was very likely to result between adjacent theatres, which caused complaint, and after the organization of the Patents Company and the collection of royalties from exhibitors, confusion was liable to result as to whether the exhibitor had paid his royalty or not, and sometimes an effort was made to collect royalties by both ex-

3 changes. And sometimes neither would collect.

Q. Well, it was one of the measures adopted by the Patents Company in order that they might control or supervise that detail of the business? A. It was not adopted by the Patents Company, because it had been in practical existence before the Patents Company was organized.

4 Q. Well, there was not any one organization prior to the formation of the Patents Company which had a list of the customers of the different Exchanges, was there? A. No, not that I know of, but the Exchanges—

Q. (Interrupting): You are not prepared to state that every Exchange gave every other Exchange a list of its customers? A. No, but I think that every Exchange knew when its customers were taking part of their service from some other Exchange.

Q. There was not any organized method for determining or giving that information to the different Exchanges, namely, the lists of the customers of every Exchange? A. I don't know about that. I was not very particularly familiar with rental conditions prior to the organization

of the Patents Company. I had had very little to do with the commercial distribution of the film by the Biograph Company, so I am not well acquainted with those conditions. 1

Q. But, in any event, it was a provision deemed wise by the Patents Company, in order to enable it to keep track of the exhibitors, is that right, and of the business?

A. No, I would not say that it was to assist the Patents Company to keep track of the business, because if the Exchange reported its customer, if two Exchanges reported a customer, the customer would be duplicated on the lists of the two Exchanges. They would have a double record of that customer. Sometimes double royalties might be collected from the customer and have to be returned. 2

Q. What objection was there to an exhibitor renting films from different Exchanges if he wanted to? A. As I say, the two Exchanges, not knowing what film was being supplied to that customer, would be likely to supply that customer with film which might conflict with the program that was being run by an adjacent theatre.

Q. Then the object was in order to enable the Patents Company to control what was being exhibited? A. No. The Patents Company had no interest in what was being exhibited. It was rather in the interests of the exhibitors and the licensed Exchanges. It was of no benefit to the Patents Company. 3

Q. In any event, you would not allow an exhibitor to rent from more than one Exchange, even if he wanted to? A. Not at the same time. But he could change his service from one Exchange to another just as frequently as he desired.

Q. But he had to change his entire service? A. Yes.

Q. Now, this Exhibit No. 25 (*supra*, p. 76), being dated April 19th, 1910, states: "Licenses of the following Exchanges have been cancelled for supplying licensed film to exhibitors whose royalties have not been forwarded to this Company, for exchanging film, and for failure to take proper precautions to prevent licensed film from passing into the hands of unlicensed persons,"—and gives the names of two companies with offices in Baltimore, New York, Troy, N. Y. and Washington, D. C. Now, I thought you stated that it was a privilege for the Exchange to act as the collection agency of this royalty? A. It was. But some- 4



1 times Exchanges collected royalties and failed to remit the royalties to the Patents Company.

Q. Well, in any event, if they did not avail themselves of the privilege, their license was cancelled? A. I don't quite understand that.

Q. Well, if they did not collect the royalties and send them on, their license was cancelled? A. If the exhibitor sent in the royalties directly to the Patents Company, then they were not required to collect it. They were required to make sure that the royalties had been paid to the Patents Company, and as a convenience to them, we permitted  
2 them to collect those royalties.

Q. Didn't you direct them to be your collection agencies under the circulars which I have read a little earlier this afternoon? A. Yes, we did that in response to their request that we should do it. In some cases, exhibitors paid the royalties direct to us, and then we notified the Exchange that the royalties had been paid to cover a certain period, and they should not collect them again.

Q. This circular, being Exhibit No. 26, dated April 23rd, 1910 (*supra*, p. 77), states: "The licenses of the following exchanges have been cancelled for violating the terms of their  
3 license agreement relating to the use of licensed film in unlicensed projecting machines, and the maintaining of an unlicensed Exchange." Now, if an Exchange rented its film to an exhibitor which was not paying you royalties, paying you a weekly royalty, its license was cancelled, is that correct? A. The Exchange, by doing that, violated the conditions of its license, and rendered its license subject to cancellation, and sometimes it was cancelled.

Q. And if it was not cancelled, it was reprimanded? A. Sometimes.

Q. And then, if it persisted in the practice, its license  
4 was cancelled? A. Sometimes.



**Exhibitors' Bulletins.**

1

MR. GROSVENOR: Counsel for the defendants have produced, at the request of counsel for the Government, certain circulars issued by the Patents Company to the various exhibitors, of which I offer the following in evidence:

**Petitioner's Exhibit No. 34.**

January 22, 1909. 2

To the Exhibitors of Moving Pictures:

**MOTION PICTURE PATENTS COMPANY.**

The Motion Picture Patents Company has acquired the Edison, Biograph, Armat and Vitagraph Patents, which patents, we are assured by counsel, cover all modern moving picture films and all existing commercial types of projecting machines. The Patents Company has licensed the following Manufacturers and Importers whose present output is 18 reels per week: 3

AMERICAN MUTOSCOPE & BIOGRAPH COMPANY,  
EDISON MANUFACTURING COMPANY,  
ESSANAY FILM MANUFACTURING CO.,  
KALEM COMPANY,  
GEORGE KLEINE,  
LUBIN MANUFACTURING CO.,  
PATHE FRERES,  
SELIG POLYSCOPE CO.,  
VITAGRAPH COMPANY OF AMERICA. 4

All moving picture films not manufactured or imported by the above licensees are infringements of our patents, and any exchange or theatre handling such infringing films, is liable to suit for injunction and damages.

The leading Manufacturers and Importers of projecting machines have also been licensed under our patents and their machines will be sold hereafter subject to the condition that

- 1 they shall be used only with licensed film. A list of the manufacturers of licensed machines will be furnished upon request.

### LICENSED EXCHANGES.

The following Exchanges have been licensed, and at the present time are the only Exchanges that are authorized to handle licensed film :

	Name	Address	City
2	Actograph Company,	50 Union Square,	New York City.
	Actograph Company,	Troy,	N. Y.
	Alamo Film Exchange,	405 Main Street,	Dallas, Texas.
	Alamo Film Exchange,	304 Conroy Building,	San Antonio, Tex.
	American Film Exchange,	645 Wabash Building,	Pittsburg, Pa.
	American Film Service,	125 Monroe Street,	Chicago, Ill.
	American Film Service,	158 North Main Street,	Memphis, Tenn.
3	American Vitagraph Co.,	116 Nassau Street,	New York, N. Y.
	George Breck,	70 Turk Street,	San Francisco, Cal.
	Buffalo Film Exchange,	131½ Genesee Street,	Buffalo, N. Y.
	C. A. Calehuff,	Fourth and Green Streets,	Philadelphia, Pa.
	Calumet Film Exchange,	Masonic Temple,	Chicago, Ill.
	Eugene Cline & Co.,	59 Dearborn Street,	Chicago, Ill.
	Eugene Cline,	268 South State Street,	Salt Lake City, Utah.
4	Clune Film Exchange,	727 South Main Street,	Los Angeles, Cal.
	Colorado Film Exchange Co.,	320 Charles Building,	Denver, Colo.
	Columbia Film Exchange,	414 Ferguson Building,	Pittsburg, Pa.
	O. T. Crawford Film Exchange Co.,	Gayety Theatre Building,	St. Louis, Mo.
	O. T. Crawford Film Exchange Co.,	Crawford Theatre,	El Paso, Texas.
	O. T. Crawford Film Exchange Co.,	Hopkins Theatre,	Louisville, Ky.

- O. T. Crawford Film Exchange Co., Shubert Theatre, 1  
New Orleans, La.
- Harry Davis, 347 Fifth Avenue, Pittsburg, Pa.
- Harry Davis, Buffalo, N. Y.
- Harry Davis, 1311 Market Street, Philadelphia, Pa.
- Denver Film Exchange, 713 Lincoln Avenue, Denver,  
Colo.
- Dixie Film Company, 620 Commercial Place, New Or-  
leans, La.
- Duquesne Amusement Supply Co., 1045 Bakewell Build-  
ing, Pittsburg, Pa.
- Duquesne Amusement Supply Co., 235 Monticello Arcade 2  
Building, Norfolk, Va.
- Edison Display Co., 1116 Third Avenue, Seattle, Wash.
- Edison Display Co., 165½ Fourth Street, Portland, Ore.
- Electric Theatre Supply Co., 47 North 10th Street, Phila-  
delphia, Pa.
- Greater New York Film Rental Co., 24 Union Square,  
New York City.
- C. J. Hite Company, Monadnock Block, Chicago, Ill.
- Howard Moving Picture Co., 564 Washington Street, Bos-  
ton, Mass.
- Imperial Film Exchange, 44 West 28th Street, New York 3  
City.
- Imperial Film Exchange, 299 River Street, Troy, N. Y.
- Imperial Film Exchange, 803 Ninth Street, N. W., Wash-  
ington, D. C.
- Imported Film & Supply Co., 708 Union Street, New Or-  
leans, La.
- Kent Film Service, 218 Nicholas Building, Toledo, Ohio.
- Kleine Optical Company, 2008½ Third Avenue, Birming-  
ham, Ala.
- Kleine Optical Company, 657 Washington Street, Boston, 4  
Mass.
- Kleine Optical Company, 52 State Street, Chicago, Ill.
- Kleine Optical Company, 302 Boston Building, Denver,  
Colo.
- Kleine Optical Company, 229 Commercial Building, Des  
Moines, Iowa.
- Kleine Optical Company, 214 Traction Building, In-  
dianapolis, Ind.
- Kleine Optical Company of California, 369 Pacific Elec-  
tric Building, Los Angeles, Cal.



- 1      Kleine Optical Company, 662 Sixth Avenue, New York, N. Y.  
        Kleine Optical Company, 309 Melhorn Building, Seattle, Wash.  
        Kleine Optical Company of Missouri, 523 Commercial Building, St. Louis, Mo.  
        Lake Shore Film & Supply Co., 314 Superior Avenue, N. E., Cleveland, Ohio.  
        H. Lieber Co., 24 West Washington Street, Indianapolis, Ind.
- 2      Lubin Film Service, 21 South 8th Street, Philadelphia, Pa.  
        Lubin Film Service, 510 Paul-Gale-Greenwood Building, Norfolk, Va.  
        Lubin Film Service, 140 West 5th Street, Cincinnati, Ohio.  
        Michigan Film & Supply Co., 82 Griswold Street, Detroit, Mich.  
        Miles Bros., Inc., 259 Sixth Avenue, New York, N. Y.  
        Miles Bros., Inc., Washington and Dover Streets, Boston, Mass.
- 3      Miles Bros., Inc., 790 Turk Street, San Francisco, Cal.  
        Mitchell Film Exchange, 120½ Main Street, Little Rock, Ark.  
        Monarch Film Exchange, 201 Thompson Building, Oklahoma City, Okla.  
        Montana Film Exchange, 41 North Main Street, Butte, Montana.  
        Morton Film Exchange, 107 Sixth Street, Portland, Ore.  
        Mullin Film Service, Solar Building, Watertown, N. Y.  
        National Film Company, 100 Griswold Street, Detroit, Mich.
- 4      National Film Renting Co., Spokane, Wash.  
        Novelty Moving Picture Co., 418 Turk Street, San Francisco, Cal.  
        Ohio Film Exchange, 16 East Broad Street, Columbus, Ohio.  
        Pacific Coast Film Co., 1724 Filmore Street, San Francisco, Cal.  
        Pearce & Scheck, 223 North Calvert Street, Baltimore, Md.  
        Pennsylvania Film Exchange, 403 Lewis Block, Pittsburg, Pa.

- People's Film Exchange, 126 University Place, New York City. 1
- Philadelphia Film Exchange, 1229 North 7th Street, Philadelphia, Pa.
- Pittsburg Calcium Light & Film Co., 121 Fourth Avenue, Pittsburg, Pa.
- Pittsburg Calcium Light & Film Co., Wilkesbarre, Pa.
- Pittsburg Calcium Light & Film Co., 501-503 Central Building, Rochester, N. Y.
- Pittsburg Calcium Light & Film Co., Neave Building, Cincinnati, O.
- Pittsburg Calcium Light & Film Co., 421 Walnut Street, Des Moines, Iowa. 2
- Pittsburg Calcium Light & Film Co., 60-62 Brownell Block, Lincoln, Neb.
- Schiller Film Exchange, 103 Randolph Street, Chicago, Ill.
- Southern Film Exchange, 1822 Fourth Avenue, Birmingham, Ala.
- Southern Film Exchange, 148 West 5th Street, Cincinnati, Ohio.
- George K. Spoor & Co., 62 North Clark Street, Chicago, Ill. 3
- Standard Film Exchange, 79 Dearborn Street, Chicago, Ill.
- Superior Film Supply Co., 621 Nasby Building, Toledo, Ohio.
- Swaab Film Service Co., 338 Spruce Street, Philadelphia, Pa.
- Wm. H. Swanson & Co., 160 Lake Street, Chicago, Ill.
- Wm. H. Swanson Co. of Omaha, 405 Karbach Block, Omaha, Neb.
- Wm. H. Swanson St. Louis Film Co., 200 North 7th Street, St. Louis, Mo. 4
- The Talking Machine Co., 97 Main Street, East Rochester, N. Y.
- Tally's Film Exchange, 554 South Broadway, Los Angeles, Cal.
- Theatre Film Supply Co., 202 South Tryon Street, Charlotte, N. C.
- Theatre Film Supply Co., 2007 Second Avenue, Birmingham, Ala.

- 1 Theatre Film Service Co., 85 Dearborn Street, Chicago, Ill.  
Theatre Film Service Co., 1038 Golden Gate Avenue, San Francisco, Cal.  
Trent & Wilson, 63 East 3rd Street, Salt Lake City, Utah.  
20th Century Optiscope Co., 59 Dearborn Street, Chicago, Ill.  
20th Century Optiscope Co., Shukert Building, Kansas City, Mo.  
20th Century Optiscope Co., 408 Eccles Building, Ogden, Utah.
- 2 Turner & Dahnken, 1650 Ellis Street, San Francisco, Cal.  
Twin City Calcium and Stereopticon Co., 709 Hennepin Avenue, Minneapolis, Minn.  
United Film Exchange, 717 Superior Avenue, N. E., Cleveland, O.  
U. S. Film Exchange, 132 Lake Street, Chicago, Ill.  
Vaudette Film Exchange Co., 103 Monroe Street, Grand Rapids, Mich.  
P. L. Waters, 41 East 21st Street, New York City.  
Alfred Weiss' Film Exchange, 219 Sixth Avenue, New York City.
- 3 Western Film Exchange, 949 Century Building, St. Louis, Mo.  
Western Film Exchange, 307 Grand Avenue, Milwaukee, Wis.  
Western Film Exchange, 201 Miners' Bank Building, Joplin, Mo.  
Wonderland Film Exchange, Seventh Street and Liberty Avenue, Pittsburg, Pa.  
Wheelan-Loper Film Co., 339 Main Street, Dallas, Texas.  
Yale Film Renting Co., 622 Main Street, Kansas City, Mo.
- 4 The Patents Company has by its licenses to the most important manufacturers of moving picture films and machines in the world, and to the leading rental exchanges, provided, for such exhibitors as become its licensees, the highest class of service with the largest and best selection of subjects, and in addition has made provision for the elimination of worn-out and objectionable film.



## APPLICATIONS FROM EXHIBITORS.

1

## For Theatres Now Open.

Every Exhibitor now in business may apply on the enclosed blank before February 1st, 1909, for a license. It is the policy of this Company to be liberal in issuing these licenses, but for the good of the business and to conserve the interests of the better class of the exhibitors, it may be necessary to refuse some applications.

## For New Theatres.

2

The Patents Company will protect theatres already established as far as may be possible, and it will issue licenses to only such new places of exhibition as obtain the approval of the Patents Company before they are established. The Patents Company will approve only such locations as in its opinion will support new houses and meet a public demand.

## TERMS OF LICENSE.

The license of the Patents Company to exhibitors covers the theatre, or place of exhibition, and is issued on the following terms:

3

(1) At the place licensed, only motion pictures may be used which are manufactured or imported by the licensees of the Patents Company and rented from a licensed Exchange.

(2) The Exhibitor shall pay a weekly royalty to be determined by the Patents Company, graded according to the relative business of each of the licensed theatres. For the period from February 1st to March 8th, 1909, this royalty shall be \$10.00 (\$2.00 per week) which sum must accompany each application. Should a license be refused, the fee accompanying the application will be returned.

4

(3) The license shall be at all times prominently displayed in the place of exhibition of the licensee and together with the machines used, be always open to inspection by the Patents Company.

1 In order that the theatres may be fully assured that the Patents Company has no desire to act arbitrarily or oppressively, it should be stated that the royalty to be collected after March 8th, 1909, from the average exhibitor will be as nearly as practicable \$2.00 per week, and that in the case of the smallest theatres, the royalty will be less. We feel confident that the royalties paid by exhibitors will be insignificant in comparison with the increase in their business, which will result from the co-operation of the various licensees of this Company.

## 2 Projecting Machines.

The Exhibitor's license covers all machines purchased before February 1st, 1909, which the Exhibitor uses in the place licensed. The Exhibitor may not use any machine purchased after February 1st, 1909, unless the official license plate of the Patents Company is attached to the head of the machine.

MOTION PICTURE PATENTS COMPANY,  
10 Fifth Avenue,  
New York, N. Y.

3

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## Petitioner's Exhibit No. 35.

### EXHIBITOR'S APPLICATION

January....., 1909.

Motion Picture Patents Company,  
10 Fifth Avenue, New York, N. Y.

4 Dear Sirs:

In accordance with your announcement of January 22, 1909, enclosed you will find \$10 fee for license covering the following theatre from February 1 to March 8, 1909:

Name of Theatre .....

Address No. .... Street,

Town or City.....State ..... 1  
 Yours very truly,

.....  
 (Name of Exhibitor)

1. Sign a separate application for each theatre.

2. Make remittances only by:

(a) New York draft.

(b) P. O. Order.

(c) Express money order.

3. The Company reserves the right to refuse this appli- 2  
 cation.

### **Petitioner's Exhibit No. 36.**

#### **MOTION PICTURE PATENTS COMPANY**

10 Fifth Avenue

New York City

Frank L. Dyer, President  
 H. N. Marvin, Vice-President.  
 J. J. Kennedy, Treasurer.  
 George F. Scull, Secretary.

D. Macdonald,  
 General Manager

Telephone, 1352 Gramercy

January 27th, 1909.

Notice to Exhibitors.

On and after February 1st, 1909, through the film Exchanges which have been licensed by the Motion Picture Patents Company, 18 reels of motion pictures each week will be available for the service of all of our licensed exhibitors. These films are manufactured or imported by the following licensees:



- 1 American Mutoscope & Biograph Company,  
 Edison Manufacturing Company,  
 Essanay Film Manufacturing Co.,  
 Kalem Company,  
 George Kleine,  
 Lubin Manufacturing Co.,  
 Pathe Freres,  
 Selig Polyscope Co.,  
 Vitagraph Company of America.

- 2 The list of Exchanges to whom licenses have been granted by the Motion Picture Patents Company appeared in the circular which reached you a few days ago. Since that time the Patents Company has licensed the following offices which with the original list will be the only offices licensed for the present:

Laemmle Film Service, 196 Lake Street, Chicago, Ill.  
 Laemmle Film Service, Main and Sixth Streets, Evansville, Ind.

- 3 Laemmle Film Service, 78 South Front Street, Memphis, Tenn.

Laemmle Film Service, 1121-23 Lumber Exchange, Minneapolis, Minn.

Laemmle Film Service, 800 Brandeis Block, Omaha, Neb.

Laemmle Film Service, 419-20 Marquam Grand Bldg., Portland, Ore.

Laemmle Film Service, 151 Main Street, Salt Lake City, Utah.

Star Film Exchange, 120 Randolph Street, Chicago, Ill.

- 4 MOTION PICTURE PATENTS COMPANY,  
 10 Fifth Avenue,  
 New York, N. Y

**Petitioner's Exhibit No. 37.**

1

Form Exch. 6.

January 27th, 1909.

To.....

(Exhibitor)

Dear Sir:—

Please take notice that this Exchange has become a licensee of the Motion Picture Patents Company of 10 Fifth Avenue, New York, and that on and after February 1st, 1909, if you have applied to the Patents Company for a license to exhibit, we will be in a position to supply you with film.

2

Our license agreement limits our rental of films to licensed exhibitors, and should you decide not to apply for such license, we will be compelled on February 1st, 1909, to discontinue our service to you.

.....  
(Exchange)

3

**Petitioner's Exhibit No. 38.**

MOTION PICTURE PATENTS COMPANY

10 Fifth Avenue

New York City

Frank L. Dyer, President.

H. N. Marvin, Vice-President.

J. J. Kennedy, Treasurer,

George F. Scull, Secretary.

4

D. Macdonald,

General Manager.

Telephone, 1352 Gramercy

February 1st, 1909.

**ANNOUNCEMENT TO EXHIBITORS.**

The objects of the Motion Picture Patents Company are:—

1        1. To insure to the manufacturer a fair and reasonable price for his film so as to enable him to maintain and improve the quality of his pictures. No effort is to be made to prevent free and absolute competition among the licensed manufacturers, all of whom realize that ultimate success can only come when the efforts of each manufacturer are directed to the improvement of the tone and quality of his output. Unless the price shall be reasonable and the quality high, the manufacturers could not expect to obtain the friendly interest and co-operation of the exhibitor and the exchange, without which success could  
2 be neither expected nor deserved.

2. By reason of the high quality of their pictures, the licensed manufacturers expect to eliminate the cheap and inferior foreign films which have been forced upon the market, and to so educate the public taste that only high class and attractive films will be accepted as reaching the American Standard.

3        3. To prevent the renter from supplying scratched and worn out film by compelling him to return all such film to the manufacturer for destruction.

4. To furnish through its several licensees an adequate variety and supply of first-class subjects (at least eighteen reels per week).

4        5. To afford the legitimate exhibitor protection from ruinous and unfair competition by refusing to license or supply licensed film to a new exhibitor attempting to start a show where not required by public demand and where the competition would injuriously affect an existing licensed theatre.

6. To encourage in all possible ways the commendation and support of the moving picture business by the better class of the community.

The aims of the Company entitle it to the cordial support of every exhibitor who is interested in the permanence and welfare of the moving picture business. The deplorable conditions existing in Europe to-day illustrate the



effect of an opposite policy. It is the intention of the Company to inflict hardship on no one, but by the active exercise of the above principles and a rigorous enforcement of the conditions established by it for the use of the films and apparatus covered by its numerous patents to save the business in this country from the demoralization with which it has been threatened by the activity of parties having little or no investment at stake in this country and whose only object is to reap a temporary harvest at the expense of the manufacturer, the exhibitor and the public. The exhibitor by accepting a license and licensed service from the Patents Company divests himself of no right and is free to renounce the license and abandon service whenever he may consider such a course to be to his advantage, in which case he will be in exactly the same position as if he had never been licensed.

MOTION PICTURE PATENTS COMPANY.

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**Petitioner's Exhibit No. 39.**

MOTION PICTURE PATENTS COMPANY

10 Fifth Avenue

New York City

Frank L. Dyer, President  
H. N. Marvin, Vice-President  
J. J. Kennedy, Treasurer  
George F. Scull, Secretary

D. Macdonald,  
General Manager

Telephone, 1352 Gramercy

New York, February 2, 1909.

Dear Sir:

We regret that at this time it is not possible to personally reply to your communication which we have received

1 with numerous others from exhibitors of moving pictures throughout the United States. We are rapidly getting our organization completed, and within a few days expect to move into our permanent quarters at number 80 Fifth Avenue, 16th floor. Our new offices and the experienced force assisting us will then be able to handle every matter pertaining to the moving picture business which may advance the interests of our licensed exhibitors. The chief purpose of the Patents Company, which is to promote the fullest co-operation between our licensees—manufacturer, exchange, exhibitor—will then be accomplished.

2 Until we have a further opportunity to take up particular cases, the following general information will probably answer all questions in which you are at this time interested:

3 We have licensed nine of the leading manufacturers of the world, who will hereafter put out their film under our patents, paying us royalties in recognition of them. We intend that the licensed films shall be distributed only by licensed exchanges and exhibited only by licensed theatres. The object of this is to put us in a position where we can regulate our business in the interest of all of our licensees and refuse licenses in any given locality where there is no public demand for additional distributors of licensed film or new theatres to show our film. It is for the protection of our patents and the exclusive use of the licensed service, which will be of the very highest class, that we require a nominal weekly royalty which the licensed theatre is to pay.

4 We do not desire any Exhibitor to pay such royalty unless he is satisfied to become a Licensee of this Company and exhibit our film. We do not ask you to pay us a royalty of \$2 a week, or any other royalty, if you should decide not to license your theatre.

If you consider the licensed service desirable for your theatre, we would call your attention to the fact that we do not ask you to sign any contract, agreement or other paper. You may send in the name and address of your theatre with a license fee of \$10 in return for which, if we decide to issue a license, we will send a license certificate which you may display in your theatre. The license fee referred to would cover a theatre up to March 8, 1909, and this has been fixed as the uniform license

fee in every case in order to meet the preliminary expense  
of organization, etc. 1

As soon as we have completed the very difficult task  
of licensing the several thousand theatres using our li-  
censed film we shall adjust the royalties to be paid after  
March 8th so that the smallest licensed theatres will pay a  
royalty of \$1 a week, or less, the average licensed theatres  
\$2 a week, and the largest and more prosperous theatres  
more in proportion to make an average of as nearly as  
practical \$2 a week for all of our licensed theatres.

We are of the opinion that the licensed film will satisfy  
the public demand in the future as it has during the past 2  
year, and for that reason, we are willing to let the entire  
proposition rest upon the merit of the licensed service.  
The licensed exhibitor is not bound to us for even a single  
day and he may, at his own option, discontinue the licensed  
service and upon doing so he is relieved from every obli-  
gation assumed, and he puts himself in exactly the same  
position that he was in before he paid his license fee  
and was accepted by us as a licensed theatre.

We call attention to this fact because there has been  
some misapprehension among exhibitors who have the idea 3  
that they are giving up some rights, or are assuming obli-  
gations, when they accept our license. We do not desire to  
interfere with the business of the theatres and we only  
propose to license those theatres which are desirable  
and where it is believed that our service is demanded by  
the moving picture public patronizing the theatre.

As to your machines particularly, we wish to make it  
clear that a licensed theatre may use any machine or ma-  
chines which were purchased before February 1, 1909, if  
they are used in exhibiting our licensed pictures. Machines  
which are purchased from the Manufacturers after Feb- 4  
ruary 1, 1909, if they are to be used in a licensed theatre  
must bear the license plate of the Patents Company.

We enclose a list of our licensed exchanges and refer  
you to anyone of them for fuller information if desired, and  
we also suggest that should this letter not answer your  
communication to us fully we will be very glad to have  
you address us a second time.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By D. Macdonald,  
General Manager.



1

**Petitioner's Exhibit No. 40.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

Dear Sir:—

2

Your favor at hand. We wish to assure you, that before issuing any further licenses in your locality, we will carefully investigate the conditions prevailing there, in accordance with our policy, and afford you all the protection possible in this respect.

Yours very truly,

MOTION PICTURE PATENTS COMPANY.

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**Petitioner's Exhibit No. 41.**

MOTION PICTURE PATENTS COMPANY

3

80 Fifth Avenue

New York City

Frank L. Dyer, President  
H. N. Marvin, Vice-President  
J. J. Kennedy, Treasurer  
George F. Scull, Secretary

D. Macdonald,  
General Manager

4

Telephone, 5456 Chelsea

Dear Sir:—

Your letter at hand, in which you ask for the return of your initiation fee for license. We regret to say, that in this instance, as per our formal notification, you were accepted as a licensee, your money applied to license and deposited in the bank and for the period you had all the ad-



vantages of any licensee. Under the circumstances we cannot grant your request. 1

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.

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**Petitioner's Exhibit No. 42.**

MOTION PICTURE PATENTS COMPANY  
LICENSE

THE MOTION PICTURE PATENTS COMPANY of  
New York, by these presents, hereby grants the right and  
license to 2

hereinafter referred to as the Licensee, to operate one or  
more motion picture projecting machines  
at

under Letters Patent of the United States Nos. 578,185,  
March 2, 1897; 580,749, April 13, 1897; 586,953, July 20,  
1897; 673,329, April 30, 1901; 673,992, May 14, 1901; 707,-  
934, August 26, 1902; and 722,382, March 10, 1903, owned  
by said Motion Picture Patents Company; subject, however, 3  
to the following conditions:

(1) Said machines must be used only with licensed motion pictures manufactured or imported by a licensee of the Motion Picture Patents Company under Edison re-issued Patent No. 12192, dated January 12, 1904.

(2) A weekly royalty to be determined by the Motion Picture Patents Company shall be paid to the said Company by the Licensee for the use of said machines. 4

(3) This license at all times shall be prominently displayed in the place of exhibition of the Licensee, and together with the machines hereby licensed, shall be always open to inspection and examination by any duly accredited agent of the Motion Picture Patents Company.

- 1 (Red circular seal)  
(inclosing words)

Motion Picture Patents  
Company  
Incorporated  
Sept. 9,  
1908  
New Jersey.

For any breach or violation of any of the above conditions, the license hereby granted may be cancelled and withdrawn, and in such case the Motion Picture Patents Company shall have the right to proceed against said machines for infringement of said patents.

- 2 THIS LICENSE NOT VALID AFTER JUNE 30, 1909.  
MOTION PICTURE PATENTS COMPANY

Attest:

George F. Scull  
Secretary.

By

Frank L. Dyer

President.

---

**Petitioner's Exhibit No. 43.**

- 3 New Permanent Address,  
80 Fifth Avenue,  
New York.

February 15, 1909.

MOTION PICTURE PATENTS COMPANY

Exhibitors Bulletin—No. 1.

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- 4 To Licensed Exhibitors:

Dear Sirs:

Your application for a license has been acted upon favorably and a license certificate, if you have not already received it, should reach you within a few days. This certificate should be displayed in a prominent place in your theatre.

## LICENSED THEATRES.

1

We beg to call your attention to the following provisions of your license:

(1) Only licensed exhibitors may show licensed film.

(2) Licensed exhibitors must not show unlicensed film.

Should you find your business subjected to unfair competition by unlicensed exhibitors showing licensed films, or by licensed exhibitors showing unlicensed film, if you will report the facts to us we will take immediate action to stop the practice.

2

## INFORMATION REGARDING THEATRES.

In order to properly protect our licensees we need information. We ask you to fill out and send us by return mail the data called for on the accompanying slip regarding your own theatre and the other theatres near you.

3

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**Petitioner's Exhibit No. 44.**

Exhibitors' Bulletin—No. 2.

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

February 27, 1909.

4

## ROYALTIES FROM EXHIBITORS.

The Patents Company has fixed March 8th to April 1st as the next royalty period, during which time the royalties for licensed theatres will be at the rate of \$2.00 per week, making a total of \$6.00, to cover the period from March 8th to April 1st, 1909. A due bill is being sent to-day to each licensed exhibitor, calling for this payment.

## 1      EXCHANGE LICENSES TO BE CANCELLED.

The Patents Company to-day notified the following Exchanges that on and after March 15, 1909, the license agreement they had entered into with this Company would be terminated:

Philadelphia Film Exchange, 1229 N. 7th Street, Philadelphia, Pa.

Wh. H. Swanson & Co., 160 Lake Street, Chicago, Ill.

Wm. H. Swanson & Co., of Omaha, 405 Karbach Block, Omaha, Neb.

2      Wm. H. Swanson, St. Louis Film Co., 200 N. 7th Street, St. Louis, Mo.

## NEW APPLICATIONS FROM EXHIBITORS.

Rules for All Applications After March 1, 1909.

On and after March 1, 1909, the Patents Company will divide all applications from exhibitors into the two following classes:

3      1. Established theatres who at the time of the application are showing moving pictures.

2. New theatres which either have not been opened as yet or which have not as yet been showing moving pictures.

The conditions governing each class of applications are as follows:

## 4      (1) ESTABLISHED THEATRES.

Any theatre which has been showing motion pictures continuously from on or before February 1st to the time of application, may apply for a license to the Patents Company direct or through any licensed Exchange upon the form of application which will be furnished, paying at the same time a \$10 license fee, which amount, together with the application, must be at once forwarded to the Patents Company.

In all cases of this class, the exhibitor's service may



begin as soon as the license fee has been forwarded with the application of the exhibitor to the Patents Company. The service shall be accepted, however, by the Exchange subject to the condition that the theatre be eventually licensed by the Patents Company, and with the understanding that if the license is refused, the Exchange shall discontinue the service to the exhibitor immediately upon receiving notice to this effect from the Patents Company.

If a license on such an application is issued, the license fee will be retained by the Patents Company, and in addition thereto the royalties of the exhibitors will be fixed, dating from the time the service began; if the license is refused, the entire license fee of \$10 will be returned to the applicant.

## (2) APPLICATIONS FROM NEW THEATRES.

Where a new theatre is projected in any locality, or where an established theatre which has not been exhibiting motion pictures since February 1, 1909, desires to exhibit licensed motion pictures, the exhibitor may make application for a license to the Patents Company, either direct or through any licensed Exchange, upon the form of application which will be furnished. A license fee of \$10 must accompany all such applications.

In all cases in this class the exhibitor may not receive any licensed motion pictures until such time as the application has been investigated by the Patents Company and the license has actually been issued to the exhibitor applying. If the license is issued, the license fee of \$10 will be applied upon the royalties fixed; in case the application is refused, the entire license fee of \$10 will be returned to the applicant.

1                    **Petitioner's Exhibit No. 45.**

Exhibitors' Bulletin—No. 3.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

March 20, 1909.

2                    **ROYALTIES FROM EXHIBITORS.**

Supplementing and completing the arrangements already made by the Patents Company, the following final system has been adopted for the collection of royalties from exhibitors and this system goes into effect immediately. The various points which should be carefully noted by exhibitors, are as follows:

3                    1. Upon receipt of a license fee from an exhibitor to whom a license has been granted, the Patents Company will immediately forward a receipt to the exhibitor and a duplicate receipt to the rental exchange from whom the exhibitor takes service.

4                    2. Exhibitors should be careful to forward license fees to the Patents Company in time to permit their rental exchange to receive the duplicate receipt before April 12th, for no exhibitor will be served by a licensed rental exchange after that date unless the rental exchange has received a duplicate receipt from the Patents Company for the license fee of the exhibitor. Hereafter bills for license fees will be mailed to exhibitors 30 days before date when license fee is due.

3. No receipt for current license fee will be given to an exhibitor who is in arrears for former license fees.

4. The statement of an exhibitor that he has forwarded his license fee to the Patents Company, but has not had time to receive his receipt, cannot be accepted by the rental exchange as authority for the supply of service.

5. Exhibitors on the Pacific Coast should allow at least 14 days' time for the transmission of funds and the return of the receipt by the Patents Company. 1

6. The following license fees have thus far been fixed:

For the period from Feb. 1 to March 8, 1909.....	\$10.00
“ “ “ March 8 to April 1, 1909.....	6.00
“ “ “ April 1 to May 1, 1909.....	8.50

7. In order to secure licensed service after April 12th, every exhibitor must have a receipt for license fees at the rate of \$2.00 per week from February 1, 1909, or from the time when he began using licensed film (whether supplied by a licensed exchange or otherwise) up to May 1, 1909. 2

### REPLEVIN SUITS.

The film licensed by the Patents Company is restricted to use in licensed theatres only. If the film is shown in an unlicensed theatre, that constitutes a breach of the license agreement under which the Manufacturer leased the film and gives the Licensed Manufacturer the right to immediate possession of the film. 3

The Licensed Manufacturers have seized film in the hands of the following unlicensed theatres, the owners of which have been made defendants in replevin suits brought within the past ten days:

#### New York City:

John Steinberger, 16th St. and 5th Ave.

Henry Hemleb, 2646 Atlantic Avenue. 4

Jefferson Amusement Co., George Hilkemeier, 1537 Broadway.

George Schwartz, 344 Fifth Avenue.

Jefferson Amusement Co., George Hilkemeier, 1740 Fulton Street.

#### Philadelphia, Pa.:

Standard Theatre, S. A. Horowitz, 1024 South Street.

Empire Theatre, J. Stanford, 4652 Frankfort Ave.

- 1 Oriental Vaudeville Co., J. Kohler, 71st and Woodland Ave.

Pittsburg, Pa.:

Crystal Theatre, Samuel McKim, 860 Braddock Avenue.  
Wonderland Theatre, William Irwin, 873 Braddock Avenue.

Happyland Theatre, L. P. Saul, 720 East Ohio Street.

Chicago, Ill.:

- 2 Robinson & Normal, 462 Lincoln Avenue.  
Chris. Rolandson, 427 Milwaukee Avenue.

3 In each of the above cases, the theatre was found to be showing licensed film, which film was seized by the Manufacturers to whom it belonged. The Licensed Manufacturers are taking action in every case where unlicensed theatres are using their film, and such cases are being vigorously pushed. The Patents Company insists upon the strict observance of the conditions under which film is issued, and no theatre not being licensed will be permitted to use licensed film.

### RELEASE DAY.

4 The Patents Company has determined to impose a penalty of not less than \$100, or the revocation of the license of any exchange for violation of the Release Day Rule. This rule provides that no licensed film shall be shown, handled or forwarded by a licensed exchange receiving it until 8 A. M. of the day upon which the film is released by the manufacturer. All licensed exhibitors should report promptly to the Patents Company any instance where they discover licensed film shown in advance of the proper day, or at a point to which it could not have been sent unless it had been started forward prior to Release Day.

### APPLICATION FOR LICENSES.

From the date of this announcement, all applications for licenses from unlicensed theatres will be governed by



the following two rules, and service from a licensed rental exchange may only be obtained by such applicants upon the conditions set forth below:

(1) If Motion Pictures have NOT been shown in the theatre within four months prior to date of application, service must be refused until the rental exchange has received notice from the Patents Company that a license has been granted. In this case \$10 must accompany the application, which, if the license is granted, applies on the royalties of the theatre from the date service begins. Where the application is refused, the \$10 fee is returned.

(2) If Motion Pictures have been shown in the theatre four months prior to date of application, the Patents Company must receive a signed and dated application for license together with a fee of \$10 to cover the license fee for the first five weeks from the date of the application. The rental exchange may supply service in such cases from the date the application is mailed to the Patents Company.

These applications will be acted upon by the Patents Company as rapidly as possible. If a license is issued the \$10 applies upon the royalties of the theatre from the date service began. If the application is refused, the entire fee will be returned, and the rental exchange notified to discontinue service.

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### **Petitioner's Exhibit No. 46.**

Exhibitors' Bulletin—No. 4.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

April 7, 1909.

### **EXHIBITORS' ROYALTIES.**

To facilitate the collection of exhibitors royalties and

- 1 for the convenience of exhibitors and rental Exchanges, this Company after consulting many prominent exhibitors and rental Exchanges, has concluded to carry into effect its original intention to make the rental Exchanges its agents to receive exhibitors' royalties.

On and after Monday, May 3, 1909, the royalty of each exhibitor will be payable weekly in advance to the rental Exchange from which the exhibitor receives service. The rental Exchange will forward the royalties to this Company and this Company will promptly mail receipts for royalties to the exhibitors.

- 2 MOTION PICTURE PATENTS COMPANY.

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### **Petitioner's Exhibit No. 47.**

Exhibitors' Bulletin—No. 5.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

- 3 New York City

September 15, 1909.

The attention of exhibitors is called to that rule of this Company which forbids the use of unlicensed film on licensed projecting machines.

Licensed exhibitors are permitted to use only film that is made or imported by licensed manufacturers or importers and leased by licensed exchanges, and a few specially licensed films such as the film of the Johnson-Burns fight.

- 4 This rule prohibits the use of special pictures such as those of parades, conventions or other current events or local scenes, if made by unlicensed manufacturers.

This notice is given to prevent any honest misunderstanding on the part of exhibitors, and hereafter no excuse for failure to comply with the rule will be accepted.

If any exhibitor is in doubt as to whether any picture is licensed or not, he should communicate with this office before using it.

The licenses of the following theatres have been can-

celled for violating the rule referred to, by exhibiting un-  
licensed pictures, and licensed exchanges have been notified  
not to supply them with service. 1

Paris Theatre, L. Campbell, Atlanta, Ga.

Dreamland Theatre, W. E. Giffert, Cameron, Mo.

Pastime Theatre, Jackson-Hoyt Co., Jacksonville,  
Fla.

Majestic Theatre, Jackson-Hoyt Co., Jacksonville,  
Fla.

Arlington Theatre, Cluse Bros., Brooklyn, N. Y.

Comique Theatre, Roach Bros., Montpelier, Vt. 2

Theatorium, Le Roy Bickle, Ardmore, Okla.

Exhibit Theatre, L. H. Pursell, Lancaster, Ohio.

Joie Theatre, J. E. Ellis, Ogden, Utah.

Roseland Theatre, Rougelot & Levy, New Orleans,  
La.

Licensed exhibitors are not permitted to sub-rent or  
loan licensed film to other exhibitors, whether licensed or  
unlicensed.

Licensed exchanges are not permitted to supply service  
to exhibitors who sub-rent or loan film. 3

Licensed exchanges have been notified not to supply  
service to the following exhibitors on account of the sub-  
renting or loaning of film by them.

D. L. Williamson, Opera House, Cairo, Ill.

H. Miller, Crystal Theatre, Tuscola, Ill.

J. B. Stout, Opera House, Danville, Ky.

J. R. Neil, Electric Theatre, Dermott, Ark.

Wm. Humble, Virginia, Harrisonburg, Va. 4

MOTION PICTURE PATENTS COMPANY.

1

**Petitioner's Exhibit No. 48.**

Exhibitors' Bulletin—No. 6.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

December 6, 1909.

2

**MODIFICATION OF RULE PROHIBITING DOUBLE SERVICE.**

The rule prohibiting the simultaneous service to an exhibitor by two or more exchanges is modified as follows:

Any exchange may rent a special or topical picture to a licensed exhibitor while the exhibitor is receiving regular service from another licensed exchange.

This modification applies only to special or topical pictures that are so advertised by the manufacturer, and not to regular releases.

3 Exchanges are not permitted to supply a special or topical picture for exhibition in a theatre in which unlicensed pictures are regularly exhibited.

**TALKING PICTURES.**

Your attention is directed to the fact that motion pictures supplied by the Cameraphone Company of New York are not licensed by this Company, and licensed exhibitors are not permitted to exhibit these pictures on machines licensed by this Company.

4

**RELEASE DAY RULE.**

The release day rule is as follows: No licensed film shall be shown, handled or forwarded by a licensed exchange until 8:00 A. M. of the day upon which the film is released by the Manufacturer.

Under this rule, licensed film must not be taken from premises of the exchange, under any circumstances, until 8:00 A. M. on release day.

**MOTION PICTURE PATENTS COMPANY.**



**Petitioner's Exhibit No. 49.**

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Exhibitors' Bulletin—No. 7.

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

March 16, 1910.

Exhibitors are hereby notified that Motion Pictures of the Military Tournament, the 101 Ranch and the Nelson-Wolgast Fight are not licensed for use on Projecting Machines licensed by this Company.

Licensed exhibitors are permitted to use only film that is licensed by this Company.

MOTION PICTURE PATENTS COMPANY.

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**Petitioner's Exhibit No. 50.**

Exhibitors' Bulletin—No. 8.

## MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

May 10, 1910.

Exhibitors are notified that the only licensed motion pictures of James J. Jeffries and Jack Johnson are the following:—

The Jeffries-Sharkey Fight made at Coney Island by the Biograph Company;

The Burns-Johnson Fight made in Australia by Gaumont;

The Johnson-Ketchel Fight made in Colma, Cal. by the Kalem Company.

No other motion pictures of either of the above men are licensed.

- 1 The recent pictures of Jack Johnson in training quarters are not licensed.

Licensed exhibitors must not run unlicensed pictures in connection with licensed pictures.

Licensed exhibitors must use only licensed pictures.

MOTION PICTURE PATENTS COMPANY.

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### **Petitioner's Exhibit No. 51.**

- 2 Exhibitors' Bulletin—No. 9.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

June 1, 1910.

- 3 Exhibitors are notified that advertising pictures supplied by others than Licensed Exchanges are not licensed for use in public exhibitions. The exhibition of such pictures by a licensed exhibitor in a public exhibition renders the license of the exhibitor subject to cancellation.

Advertising pictures made by a Licensed Manufacturer may be displayed by an exhibitor in private only, for the convenience of the advertiser and his associates, but such pictures may not be displayed during a regular performance.

MOTION PICTURE PATENTS COMPANY.

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- 4 **Petitioner's Exhibit No. 52.**

Exhibitors' Bulletin—No. 10.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

July 2nd, 1910.

Exhibitors are notified that motion pictures and motion

picture projecting machines manufactured or supplied by the Gaumont Company of New York after June 20th, 1910, are not licensed by this Company and must not be used by exhibitors licensed by this Company.

Motion pictures made by the Societe des Etablissements Gaumont of Paris, France, and imported and supplied by Geo. Kleine of Chicago are licensed and may be used by licensed exhibitors.

MOTION PICTURE PATENTS COMPANY.

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**Petitioner's Exhibit No. 53.**

Exhibitors' Bulletin—No. 12.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

May 29th, 1911.

Please take notice that after June 1st, 1911, a portion of the motion pictures supplied to you is likely to be on the ordinary film stock in place of the non-inflammable film stock that has been generally used during the past two years.

After the above date, Exchanges will have the option of specifying either the ordinary or non-inflammable stock when ordering from manufacturers.

MOTION PICTURE PATENTS COMPANY.

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By Mr. GROSVENOR:

Q. This Exhibit No. 34 (*supra*, p. 87) which I show you, being a letter dated January 22, 1909, addressed to the exhibitors of moving pictures, that was the notice, which you sent out to the exhibitors, of the formation of the Patents Company, and of the License Agreements which you had adopted? A. Yes, that appears to be such a notice.

Q. And the blank attached to this exhibit, entitled "Exhibitor's Application" was the copy of the application or

1 blank form which the theatre desiring service was to fill out, and then send in in order to obtain service? A. Yes, that was a blank which was provided for the convenience of the exhibitor in applying for a license under our Patents.

Q. And in order for these different exhibitors to get films after this date, it was necessary for them to sign this application and send in the \$10 fee referred to in the application?

A. Well, it was necessary for them to apply for a license in some form, and to pay the license fee, and become licensed before they could obtain licensed film from licensed manufacturers.

2 Q. And the term you use "Licensed film" is the term which you apply to all motion picture films, meaning these reels of this translucent film upon which these innumerable pictures had been printed. That is what you mean by licensed film? A. I mean film of that kind licensed for use on licensed projecting machines.

Q. Well, the term "licensed film" was a term applied by you to all film with pictures upon it for use in projecting machines? A. For all such film licensed for use in projecting machines. It was not a term applied to unlicensed infringing films of such description made by un-

3 licensed infringers.

Q. All film made by these nine manufacturers named on this circular, being Exhibit No. 34, was called "licensed film," is that right? A. Yes, all film made by them was licensed film.

Q. And the term "licensed film" was applied to these positive films which had been printed from the negative? A. Yes, it was sometimes called licensed motion pictures from licensed film in common parlance in the art.

4 Q. What I mean is you are referring here in this distribution of licensed films, to positive films? A. I am referring to positive films, yes.

Q. Negative films were not, and are not used on projecting machines, are they? A. No, not commonly.

Q. Well, it is a very rare exception where they are used, isn't it? A. Yes, very rare.

Q. And practically never. It might be for curiosity or something like that, but otherwise not, would it? A. Well, I would not go quite as far as that.



Q. Well, 99 per cent. of the commerce is in positive films? A. I think at least 99 per cent. 1

Q. And this positive film does not differ from any ordinary photograph, does it, except in the number of photographs that are printed, and that the subject matter or the material upon which a picture is copied is different from the material upon which an ordinary photograph is copied? A. Well, I should say that the resemblance of this motion picture film to an ordinary photograph was about the same as the resemblance in the result to a beholder of a motion picture as compared with a still picture.

Q. Now, by unlicensed film, you mean the film or the positive film of any manufacturer other than these nine? A. I mean film made or imported by anybody without a license from the owners of the patent, in infringement of the patent. 2

Q. Well, these nine were the only ones licensed, weren't they? A. Yes.

Q. And these included all manufacturing at that time in this country? A. Yes.

Q. Well, then, any that was imported, any positive film that was imported by anybody in this country, would be called unlicensed film under your terminology? A. Imported by anybody? You mean by anybody other than these nine? 3

Q. Other than these? A. Yes, all such persons would be infringers.

Q. This Exhibit No. 37 (*supra*, p. 97) which I show you, dated January 27, 1909, with a blank for the signature of an exchange below, that was a form to be issued by the exchanges to the different theatres who wished service? A. I presume it was intended for that purpose. I do not recall it.

Q. Mr. Marvin, you have been talking about and using the term "infringing film." How many years has the Biograph Company been manufacturing film for use on projecting machines, or this motion picture film? A. Since the latter part of 1896. 4

Q. From 1896 to the Fall of 1908, was a period of 12 years, and during that period, you had been selling this motion picture film? A. We had not been selling it all of

1 that time. For many years, the Biograph Company did not sell any film. They merely—

Q. (Interrupting) How many years prior to 1908 had you been selling this positive motion picture film? A. I do not recall exactly, but I should say about three or four years. In small quantities.

Q. Prior to the formation of this Patents Company, had not your company contended that this motion picture film was an article not to be patented, and unpatentable? A. Our company during that period—

2 Q. (Interrupting.) Can't you answer that question yes or no, and then give such explanation later as may be necessary. Now, read the question, please.

The stenographer reads the question.

Q. Do you understand the question? A. I understand the question.

Q. Well, if you do not feel like answering that— A. (interrupting) I do not think I can answer that question directly by yes or no.

3 Q. I will go back.

Mr. WILLIS: Let him go on and explain.

Mr. GROSVENOR: If he cannot answer the question yes or no, I will go back, and we will come to it in another form.

By Mr. GROSVENOR:

4 Q. You had a suit against the Edison Company back in 1899 or 1900 or 1901, involving Edison's original Patent No. 589,168. A. I don't recall what that patent covers. Can you tell me what it covers?

Q. Well, let me change that. You had a suit against the Edison Company back in 1900 and 1901, involving a patent of Edison's, by virtue of which patent the Edison Company claimed the right to manufacture all moving picture cameras, and also claimed the patent on all moving picture films. Isn't that right? A. The Edison Company brought such a suit against us.

Q. That is right. And you defended it? A. We defended it.

Q. And you were an officer of the Biograph Company? 1

A. I was.

Q. And you contested it vigorously? A. We did.

Q. And you won, did you not? A. We did.

Q. And it was held, was it not, in that case, that the film—that motion picture film was not patentable matter?

A. I do not so understand it.

Q. Did you not so contend from that time, 1902, down to the formation of the Patents Company, that under that decision, you had established the fact that this film was not patentable, and that you had the right to manufacture and sell motion picture film? 2

Mr. CALDWELL: Before you answer that, I would like the stenographer to read that question, please.

(The stenographer repeats the question.)

Mr. CALDWELL: That is all right. There is no objection to that.

A. We contended that we had the right to make motion picture films.

Q. And you contended also, did you not, that motion picture films imported from abroad you had the right to sell in this country? A. We did so contend. 3

Q. And you contended that you had established that right by that decision which you had obtained? A. No, I do not think we contended that we had established that right by that decision. We were engaged in commercial warfare, and we were doing everything that we could to fight the patents.

Q. Now, I want to show you what purports to be a statement signed by you and J. J. Kennedy, published in the Motion Picture World of February 15th, 1908. Will you please read that? A. (The witness reads as indicated.) 4  
What is the question?

(The stenographer repeats the question.)

The Witness: I have read the article.

Q. Now, do you recall making any statement of a similar character about the time referred to in that magazine? A. I do not recall definite statements, but we were constantly engaged in making statements that we proposed to continue



1 to make film, and that we were willing to defend our customers against suits under the patents.

Q. Now, this statement which this magazine refers to is the following signed statement, and says—begins: “We were urged to joint the Edison-Pathe combination, but we refused.” The Edison-Pathe combination referred to there was the Association of Edison Licensees, was it not, which was perfected about February 1st, 1908? A. It was.

Q. You had refused to join that association, had you not? A. We did.

2 Mr. CALDWELL: I object to the term “association” there. There has been no evidence in the case that there was any association of Edison licensees. Heretofore you have referred to them as the “Edison Licensees.”

Mr. GROSVENOR: Well, you can use the word “number” if you prefer.

3 Q. Then, the statement goes on: “The Court of Appeals has twice repudiated the claims of Edison that he is the creator of the moving picture art, and has limited his patents to his own particular form of apparatus. The same court has also decided that our apparatus does not infringe the Edison patents. We stand absolutely independent and protected by our own patents. We have largely increased our capacity, and are prepared to regularly supply our own films and the films of the best foreign manufacturers in any quantity. We will, at our own expense, protect our customers from any form of patent persecution in connection with the film supplied by us. Edison cannot obtain an injunction against any rentor or exhibitor, for the reason that his film patent has not been adjudicated, and a decision cannot be obtained in less than two years. H. N. Marvin, J. J. Kennedy.” Do you recall issuing or publishing a statement after the formation or joining together of other manufacturers with the Edison Company? A. You mean after Edison licensed a number of manufacturers?

4

Q. Yes. In the year 1908? A. Additional to this statement?

Q. No. Do you recall making this statement? A. I do not recall doing it, but I presume I did.

Q. Then you believe that is a copy of a statement issued



by you at that time? A. It is quite likely that it may have been. 1

Q. You would not make any such statement, would you, unless you believed that what you were stating was the truth? A. I think not.

Q. When did you change your mind, and what caused you to change your mind? A. I don't just remember when my mind changed on those facts.

Q. Until the formation of the Patents Company, you, for a number of years, had at all times contended that these motion picture films could not be sold as patented articles rightfully, is that not the fact? A. We were engaged in a bitter warfare, fighting for our existence. 2

Q. Can you answer that— A. (Interrupting.) I cannot answer that question by yes or no. I must make a reasonable explanation of my attitude. We were engaged in bitter commercial strife. We did what all people do under those circumstances. We fought the best we knew how. We belittled the possessions of our enemies, and we magnified our own possessions.

Q. You refer in this statement to "patent persecution." Did you feel that the number of suits brought against you amounted to persecution? A. I would not say that we felt that we had been persecuted, but we were led to believe that others might be so pursued by suits that it would have the effect of persecution; perhaps merited. 3

Q. Now, it was at this time or about this time that you bought the Latham patent, is it not? A. What is the date there?

Q. The date of this article is February 15th, 1908? A. Yes, about that time.

Q. How much did you pay for it? A. I don't remember.

Q. Have you any recollection? A. I should say that was \$5,000 or less. 4

Q. Is there any means of ascertaining the exact amount which you paid for it? A. I can ascertain it exactly.

Q. I wish you would please do so. The Latham patent had been issued five or six years before that, had it not? A. I believe it had been.

Q. And then you brought a lot of suits right away, in 1908, against the different Edison licensees upon that Latham patent? A. We brought a number of suits on the Latham patent very soon after we acquired it.

1 Q. Now, in the answer that you filed, you make the statement that everybody had been infringing the Latham patent for five or six years. Is that the fact? Since it had been issued? A. Ever since it had been issued.

Q. You had been infringing it too? A. It was always a question whether we infringed it with our Biograph camera, or not. We infringed it with the Warwick camera, while we used the Warwick camera. But we did not make use of projecting machines.

2 Q. And did you purchase this patent for the purpose of being able—in order that it might be the basis for your bringing these other suits against the other people? A. We purchased that patent so as to be free of an infringement of it in our subsequent business, and because we thought it was valuable.

Q. And also in order that you might bring these suits, which you immediately brought? A. No, not in order to bring suits, but because we thought the patent was valuable. We would have been very glad to have had people recognize the patent without the necessity of bringing suits.

3 Q. Now, at this time, in March, 1908, the other manufacturers said that this Latham patent was not of any consequence, didn't they? A. Well, I presume they did. I don't know.

Q. As a matter of fact, none of these patents were considered of dominant importance by all you parties until you formed this new company, and conveyed them to it, were they? A. I think all of the owners of patents considered them of dominant importance, and those who did not own them, belittled them.

4 Q. Since the combination was formed then, they all ceased belittling them, in your judgment? A. I think as soon as anybody acquired a license under the patents, and paid a consideration for the license, they would appreciate the value of the license and of the patent.

Q. Now, how much did you pay for the Pross patent?

Mr. WILLIAMS: I object to that, going into the price of patents. Of what materiality is that, sir?

A. I will have to answer that by an explanation. When the American Mutoscope Company was organized, the former name under which the Biograph Company was known, Mr.

Casler and myself assigned to that company all of the patents or inventions that we had then made, relating to motion pictures, and also all subsequent inventions. Later on, we manufactured apparatus for the Biograph Company, and in the construction of that apparatus we employed experts on salary, and those experts were obligated by contract to turn over to the Biograph Company inventions that they made relating to the motion picture art. The Pross shutter patent was a patent granted on an invention made by a man named Pross working under such a contract, so that it went direct to the Biograph Company in that way as the structural creation of one of its employees.

Q. Then no cash consideration was paid? A. No cash consideration other than the salary paid to the man for doing the work.

Q. Returning to these Exhibitors' Bulletins, Exhibit No. 40 (*supra*, p. 102), a printed letter stating: "Dear Sir:—Your favor at hand. We wish to assure you that before issuing any further licenses in your locality, we will carefully investigate the conditions prevailing there in accordance with our policy, and afford you all the protection possible in this respect." Did you have so many inquiries of this character that it was necessary for you to print a letter for convenience, or a form for convenience? A. I think we had a large number of such inquiries.

Q. And that was the general form of reply? A. I think that was the general form.

Mr. WILLIAMS: What is the date of that?

Mr. GROSVENOR: It bears no date.

Q. Here is another exhibit, No. 41 (*supra*, p. 102) (reading): "Your letter at hand, in which you ask for the return of your initiation fee for license. We regret to say that in this instance, as per our formal notification, you were accepted as a licensee, your money applied to license and deposited in the bank and for the period you had all the advantages of any license. Under the circumstances we cannot grant your request." That was another printed letter which you sent in response to requests? A. I have no recollection of that form. I think it was prepared by Mr. McDonald before I commenced to give very active attention to the detail business of the Patents Company.



1 Q. This Exhibit No. 42 (*supra*, p. 103), entitled "Motion Picture Patents Company," that was the diploma or license which you asked the exhibitor to place in his theatre? A. That is the form.

Q. That is a copy of the form used? A. That is a copy of the form used.

2 Q. Now, Exhibit No. 44 (*supra*, p. 106), being an Exhibitor's Bulletin, states: "The Patents Company today notified the following Exchanges that on and after March 15th, 1909, the License Agreement they had entered into with this company, would be terminated." It gives the name of the Philadelphia Film Exchange, Philadelphia; Wm. H. Swanson, at Chicago, Omaha and St. Louis. That was an example of the way you sent notices to all exhibitors when the license of a rental exchange was cancelled. Is that correct? A. Yes, that is the general form frequently used to notify exhibitors. We found it necessary to notify them, otherwise they might use unlicensed infringing film supplied by their rental exchange inadvertently, and thus inadvertently violate the conditions of their license.

3 Q. By "unlicensed infringing film," you mean film supplied by any manufacturer who was not included among those nine manufacturers who had taken licenses? A. Who was not one of those nine manufacturers or importers.

Q. Yes. Or importers? A. Yes.

4 Q. In Exhibit No. 45 (*supra*, p. 109), under the title, "Replevin suits" you say as follows: "The licensed manufacturers have seized film in the hands of the following unlicensed theatres, the owners of which have been made defendants in replevin suits brought within the past ten days," and gives the name of 13 exhibitors in New York, Philadelphia, Pittsburg and Chicago. Whenever you find any film manufactured by any of these nine or ten licensed manufacturers, exhibited in an unlicensed theatre, you institute a replevin suit if possible, do you not? A. The manufacturer who owns the film usually does, because—

Q. (Interrupting.) On information furnished by you, by the Patents Company? A. Sometimes. Information furnished by anyone. Usually information furnished by exhibitors.

Q. Have not you brought hundreds of replevin suits in that way in the country? A. Whom do you mean by "you?"



Q. Well, I should perhaps be more accurate, and use the term, have the licensed manufacturers brought, between them, hundreds of replevin suits of that character? A. They have brought many such suits. I have no idea of the number.

Q. And they have been brought all over the country?

A. In various parts of the country.

Q. And that has been one of the methods in order to secure an observance of these terms of the license agreement? A. Yes. That has been one of the methods that the manufacturers had to employ in order to comply with the terms of their license.

Q. That is, in order to prevent any of their films from being exhibited in theatres which were not licensed? A. To prevent the film from being used on unlicensed infringing projecting machines.

Q. And by "unlicensed infringing projecting machines" you mean machines owned by any exhibitor, or used in any theatre, which is not licensed by the Patents Company?

A. Any machines owned by anyone, and involving inventions covered by our patents, and used without a license under those patents.

Q. Well, your definition of "unlicensed infringing projecting machines" embraces all machines in the country not licensed by you? A. I think it does.

Q. And includes, therefore, all theatres which do not have licenses from you? A. I think it includes nearly all, if not all of the machines used in any theatres without licenses from us. Because I think all such machines involve the inventions covered by our patents.

Q. Many of those machines, or some of them, at any rate, were sold prior to February 1st, 1909, without any restrictions, were they not? A. Why, we never considered that the date of sale of a machine had anything to do with the fact as to whether it infringed our patents or not.

Q. You testified this morning that at least five of these nine manufacturers sold projecting machines prior to 1909 without conditions? A. Why, those machines were sold by them in defiance of the patents, and they were infringing the patent when they made those machines, and sold them, and they knew it.

Q. They were sold by five of these nine manufacturers, who joined in these license arrangements with the Patents

1 Company, were they not? A. They were sold in an infringing manner by five manufacturers who subsequently took licenses under those patents.

Q. Yes. A. So as to be able to sell the machines lawfully.

Q. That is to say, some of these projecting machines in unlicensed theatres were sold outright by some of these licensed manufacturers prior to February 1st, 1909, and sold without condition or restriction. Is not that right?

A. Yes. Sold as infringing machines.

2 Q. They were sold without restrictions or conditions being imposed by the vendor? A. I don't know that they imposed any conditions or restrictions. I do not think they did.

Q. You think they did not? A. I think they did not. They were infringers.

Q. Now, isn't it a fact that part of the royalties collected on these projecting machines, or, in other words, part of the royalties collected from these theatres, are distributed among those five manufacturers who sold those machines without conditions prior to February 1st, 1909?

3 A. Some portion of the royalties collected by the Patents Company for the use of these machines is distributed to some of those—to those five manufacturers.

Q. That is, 24 per cent. of the exhibitors' royalties is divided among a number of the manufacturers, is it not?

A. Yes.

Q. And of that 24 per cent., some goes to those five that you have mentioned? A. Yes.

Q. And that is true although those machines were sold, without conditions prior to February 1st, 1909? A. Yes.

4 Q. Exhibit No. 47 (*supra*, p. 112), being a circular dated September 15, 1909, issued to the exhibitors, contains the names of ten theatres in Atlanta, Cameron, Mo. Jacksonville, Fla., Brooklyn, Montpelier, Vt., Ardmore, Oklahoma, Lancaster, Ohio, Ogden, Utah, New Orleans, La., stating: "The licenses of the following theatres have been cancelled for violating the rule referred to by exhibiting unlicensed pictures and licensed exchanges have been notified not to supply them with service." Are these rules being enforced today respecting the showing of pictures made by non-licensed manufacturers in these theatres, which you have

licensed? A. You mean the rule which prohibits them  
from using motion pictures that are not licensed for use  
in licensed projecting machines? 1

Q. Yes. A. Yes. That rule is being enforced.

At this point an adjournment was taken until 10:30 A. M.,  
Thursday, January 16th, 1913, at the same place.

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New York City, January 16, 1913. 2

The hearing in this case was resumed at the McAlpin  
Hotel, New York City, on this January 16, 1913, at 10:30  
o'clock A. M.

Present, on behalf of the Petitioner, Hon. EDWIN  
P. GROSVENOR, Special Assistant to the Attor-  
ney General.

Also, JOHN R. DARLING, Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED  
R. WILLIAMS, appearing for Motion Picture Pat-  
ents Company, Biograph Company, Jeremiah 3  
J. Kennedy, Harry N. Marvin, and Armat Mov-  
ing Picture Company.

Mr. J. H. CALDWELL, appearing for William Pelzer,  
General Film Company, Thomas A. Edison,  
Inc., Kalem Company, Inc., Melies Manufac-  
turing Company, Pathe Freres, Frank L. Dyer,  
Samuel Long, J. A. Berst and Gaston Melies;  
also appearing for

Mr. HENRY MELVILLE, Attorney for George  
Kleine, Essanay Film Manufacturing Com- 4  
pany, Selig Polyscope Company, George K.  
Spoor and W. N. Selig.

The Examiner stated that all original exhibits had been  
returned to Mr. George R. Willis.



- 1 Thereupon HARRY N. MARVIN, resumed the stand for further examination :

Direct examination (continued) by Mr. GROSVENOR :

Q. I show you Mr. Marvin, an article in the Moving Picture World, Volume 2, page 138, issue of February 22, 1908, purporting to be a statement by Vice-President H. N. Marvin. Do you recall making that statement, Mr. Marvin? A. I did not make the statement, and some of the items in the statement, I am positive that I did not make.

- 2 Q. Do you remember making a statement about that time to the Moving Picture World relating to the formation of this body known as Edison licensees? A. I have no recollection of making such a statement.

Q. Did you make this statement to any other papers at this time in connection with or relation to the position of your company towards the association that you refused to join?

- 3 Mr. CALDWELL: I object to the use of the word "association" in connection with the Edison licensees. There is no evidence in this case showing that there is any such association, and it is unfair to put that question in that particular way until proof has been offered of that matter, and I object to the question.

A. I have no definite recollection of having made any statement to newspapers of any sort at that time.

- 4 Q. Mr. Marvin, I show you an article in the same volume at page 205, being the issue of March the 14th, 1908, and purporting to be a copy of a statement issued and signed by the American Mutoscope and Biograph Company. Is that a copy of a statement issued by that company on or about that time? A. It appears to be.

Q. Was that issued to the trade under the title, "The Facts?" A. I believe it was.

Q. Did you assist in the preparation of that article? A. According to my best recollection that article was prepared by our counsel.

Q. Did you assist in the preparation of that article? A. I don't recall that I did.

Q. Was it submitted for your consideration before it was published? A. It probably was. 1

Q. Who were your counsel? A. Kerr, Page & Cooper.

Mr. GROSVENOR: I offer in evidence at this time the statement identified by the witness yesterday appearing at page 112 of the issue of February 15, 1908, of the Moving Picture World, being Volume 2, thereof, which is marked Petitioner's Exhibit No. 54.

**Petitioner's Exhibit No. 54.** 2

**THE POSITION OF THE AMERICAN MUTOSCOPE  
AND BIOGRAPH COMPANY.**

"WE were urged to join the Edison-Pathe combination, but we refused.

The Court of Appeals has twice repudiated the claims of Edison that he is the creator of the moving picture art, and has limited his patent to his own particular form of apparatus. The same court has also decided that our apparatus does not infringe the Edison patent. 3

We stand absolutely independent and protected by our own patents.

We have largely increased our capacity and are prepared to regularly supply our own films and the films of the best foreign manufacturers in any quantity.

We will, at our own expense, protect our customers from any form of patent persecution in connection with film supplied by us.

Edison cannot obtain an injunction against any renter or exhibitor for the reason that his film patent has not been adjudicated and a decision cannot be obtained in less than two years." 4

H. N. Marvin,  
J. J. Kennedy."

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Mr. GROSVENOR: I also offer in evidence the statement just identified by the witness at page 205, Volume 2, of the Moving Picture World, which is marked Petitioner's Exhibit No. 55.

1

**Petitioner's Exhibit No. 55.****BIOGRAPH COMPANY DEFINE THEIR POSITION.**

2

In the year 1898 an action for infringement was brought against the American Mutoscope and Biograph Company, which had been for about three years in the business of manufacturing moving picture films, by Thomas A. Edison, under a patent to the latter, No. 589168, dated August 21, 1907. This patent contained four claims for a camera for taking pictures of objects in motion and two claims for a moving picture film.

The Court of Appeals for the Second Circuit decided this suit in favor of the defendant, the American Mutoscope and Biograph Company, on all points, finding Edison's claims both for the camera and for the film to be void. Among other significant expressions in the opinion of the Court reported in Vol. 114 of the Federal Reporter, page 926 occur the following:

3

"The photographic reproduction of moving objects, the production from the negatives of a series of pictures representing the successive stages of motion, and the presentation of them by an exhibiting apparatus to the eye of the spectator in such rapid sequence as to blend them together and give the effect of a single picture in which the objects are moving, had been accomplished long before Mr. Edison entered the field.

4

It is obvious that Mr. Edison was not a pioneer, in the large sense of the term, or in the more limited sense in which he would have been if he had also invented the film. He was not the inventor of the film. He was not the first inventor of apparatus capable of producing suitable negatives, taken from practically a single point of view, in single line sequence, upon a film like this."

After this first failure Mr. Edison surrendered his patent and it was later reissued in two divisions. In re-issue No. 12,037, dated September 30, 1902, he obtained four claims of limited scope based on the camera shown in



the original patent. In reissue No. 12,038, of the same date, he secured two limited claims to a film. Both of these reissued patents were put in suit against the American Mutoscope and Biograph Company in the latter part of the year 1902. 1

In the suit under the reissued patent for the film, the defendant filed a demurrer which resulted in the withdrawal of the action by Mr. Edison. No further suit has been brought against the American Mutoscope and Biograph Company under any patent for a film and no such suit has been pressed, so far as we are aware, against any other person or corporation during the past five years. 2

The suit under the reissue for the camera, was carried through both the Circuit Court for the Southern District of New York, where the bill was ordered dismissed, and through the Court of Appeals for the Second Circuit, which, on the main contention, sustained the finding of the Court below.

The American Mutoscope and Biograph Company at the time when the second action was brought against it, was using two forms of camera, one known as the Biograph camera, which it had brought out in 1896 and for which it had obtained controlling patents of unquestionable validity; and a foreign camera known as the Warwick camera, of which it had purchased a small number for special uses. The Court of Appeals held that the Biograph camera was not covered by the claims of the Edison patent and was not an infringement of that patent. The use of the Warwick camera was enjoined, but this caused no interruption whatever in the defendant's business operations, and for over a year the American Mutoscope and Biograph Company has manufactured many hundreds of thousands of feet of moving picture film with its Biograph camera. 3

The Court of Appeals in the second action found claim 4 of the Edison reissued patent for the camera, to be void, and in its opinion, which is reported in Volume 151 of the Federal Reporter, page 767, the Court says: 4

"Upon the appeal in the first suit we discussed the prior art and the general character of the device sought to be patented at very great length. It

1 is unnecessary to repeat that discussion. All that  
 was said in the prior opinion, however, may be con-  
 sidered as embodied herein, since the conclusion  
 hereinafter expressed is founded upon the findings  
 then made, and which nothing in the present record  
 or argument induces us to qualify in any manner.  
 We held that Edison was not a pioneer in the large  
 sense of the term, or in the limited sense in which  
 he would have been if he had invented the film. He  
 was not the inventor of the film. He was not the  
 2 first inventor of apparatus capable of producing suit-  
 able negatives, taken from practically a single point  
 of view, in single line sequence upon a film like his."

From the above it will be seen that none of the three  
 suits brought by Edison against this company has been de-  
 cided in Edison's favor, but on the contrary, that all three  
 suits were decided adversely to Edison with the single ex-  
 ception that in the last action the Court found that three  
 of the four claims of the Edison reissue were valid if lim-  
 ited to the special form of camera shown and described in  
 3 his patent.

The camera of the Edison patent in question, is not,  
 however, capable of producing long lengths of picture film,  
 and has not been used by the Edison Manufacturing Com-  
 pany for a number of years, if ever, for the commercial  
 manufacture of standard films. On the contrary, not only  
 the Edison Company, but others engaged in the manufac-  
 ture of such films have been compelled to adopt the camera  
 of the Latham Patent No. 707,934, dated April 26, 1902.

The American Mutoscope and Biograph Company owns  
 the Latham Patent and has a suit pending against the Edi-  
 4 son Company for infringing it.

AMERICAN MUTOSCOPE & BIOGRAPH CO.

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Mr. CALDWELL: Petitioner's Exhibits Nos. 54 and  
 55, are objected to as irrelevant, incompetent and im-  
 material, and as at most a mere statement by the

witness, and not binding upon any of the parties, 1  
upon any of the other parties.

Mr. GROSVENOR: These exhibits are introduced in  
part as admissions on the part of the defendants  
controverting certain allegations in the answer.

By Mr. GROSVENOR:

Q. Was there a man named George E. Van Guysling ever  
connected with the Biograph Company as Vice-President and  
General Manager? A. There was.

Q. In the early part of 1907? A. I believe that was the 2  
date.

Q. I show you a letter addressed to the Moving Picture  
World, and purporting to be signed by him on behalf of  
the company, being printed in Volume 1, of the Moving Pic-  
ture World, at page 43 of the issue of March the 23rd, 1907,  
and I will ask you if that was a copy of a letter written by  
your company at that time? A. I have no knowledge upon  
that whatever. I was not actively connected with the com-  
mercial side of the company's business at that time.

Q. Is Mr. Van Guysling now connected with your com-  
pany? A. No, sir, he is not, and he has not been for many 3  
years.

Q. He was at that time? A. Yes.

Q. Where is he now? A. I have no idea.

Mr. GROSVENOR: I now introduce the letter re-  
ferred to signed American Muto. and Bio. Company,  
George E. Van Guysling, V. P. & G. M., as Petition-  
er's Exhibit 56, subject to subsequent proof of its  
authenticity.

Mr. CALDWELL: Which is objected to as irrele- 4  
vant, incompetent and on the further ground that it  
is immaterial and that its authenticity has not been  
shown.



1

**Petitioner's Exhibit No. 56.**

Editor, The Moving Picture World,  
361 Broadway, New York City.

Dear Sir:—

2

Our attention has been called to an advertisement of the Edison Manufacturing Company relating to the recent decision of the United States Court of Appeals in the suit of the Edison Company against the American Mutoscope & Biograph Company. We note that the phraseology of the advertisement indicates that this company is dependent upon the Warwick camera or some similar camera for its business. While disliking newspaper controversy, we deem it only just to ourselves and the public to emphasize what we have already stated: that the business of our company is in no way dependent upon the Warwick camera or similar cameras, either for our film or mutoscope service, and is in no way affected by this decision. The validity of our patents has been established and our business will continue to be conducted without in any way infringing the rights of the Edison Manufacturing Company or others.

3

Very truly yours,  
AMERICAN MUTO. & BIO. CO.,  
George E. Van Guysling,  
V. P. & G. M.

---

By Mr. GROSVENOR:

4

Q. Mr. Marvin, in Exhibit 55 (the statement issued by the Biograph Company entitled "The Facts") the statement is made (*supra*, p. 133): "In the suit under the reissued patent for the film, the defendant filed a demurrer which resulted in the withdrawal of the action by Mr. Edison. No further suit has been brought against the American Mutoscope and Biograph Company under any patent for a film and no such suit has been pressed, so far as we are aware, against any other person or corporation during the last five years." In the beginning of 1908, there was no suit pending against you under reissued patent No. 12192, namely, the film patent, was there? A. I think not.

Q. And this statement is also true, is it not: "No such  
suit has been pressed, so far as we are aware against any  
other person or corporation during the last five years." That  
statement, of course, related to the film patent? 1

Mr. CALDWELL: I object to that as irrelevant,  
incompetent and immaterial, and on the ground that  
it has not been shown that the witness at that time  
had knowledge of all suits pending under this patent  
against persons other than himself or his own com-  
pany

A. I think the statement is correct in so far as it relates  
to my knowledge of other suits.

Q. The same exhibit (55) also states: "The American  
Mutoscope & Biograph Company at the time when the sec-  
ond action was brought against it, was using two forms of  
camera, one known as the Biograph Camera, which it had  
brought out in 1896, and for which it had obtained controll-  
ing patents of unquestionable validity." What is the patent  
under which you brought out the Biograph Company, is  
that the Casler patent? A. Yes.

Q. And was that a patent among those that were trans-  
ferred to the Patents Company? A. It was one of the pat-  
ents. 3

Q. Yes, I understand. A. I mean it was one of the pat-  
ents that was first assigned to the Biograph when the Bio-  
graph Company was organized and was one of the patents  
which was subsequently assigned to the Motion Picture Pat-  
ents Company, but the principal patent which was assigned  
to the Biograph Company when that company was organized  
was a patent on a mutoscope, which was an exhibiting ma-  
chine for direct view and not a projecting machine.

Q. By "exhibiting machine" you mean something like a  
kinetoscope in which a person looks directly at the picture?  
A. Yes, a peep-hole machine. 4

Q. Where the picture is not displayed on the screen?  
A. Yes.

Q. Now, the Casler patent related to a camera and that  
you say was transferred? A. Yes.

Q. What number was that among these patents that were  
given to the Patents Company? A. The patent that was

1 assigned to the Motion Picture Patents Company was a camera patent issued to Herman Casler, and numbered 629,063, dated July 18, 1899.

Q. Was that Biograph camera a friction feed camera?  
A. It was.

Q. The same exhibit (55), also states (*supra*, p. 133): "For over a year, the American Mutoscope & Biograph Company has manufactured many hundred of thousands of feet of moving picture film with its Biograph camera."

2 This statement refers to the same camera brought out under the Casler patent which you have just named? A. Yes.

Q. Mr. Marvin, I show you a statement or account printed in the Moving Picture World, Vol. 1, page 608, in the issue of November 23rd, 1907, entitled "The Pittsburg Conference," which was evidently a conference of film manufacturers and film renters. Will you look over that account?

3 Mr. CALDWELL: I object to the characterization of the article just shown the witness, that is, that it was evidently a meeting of the film manufacturers and renters in the statement made to the witness.

The Witness: Do you want me to read it carefully, Mr. Grosvenor?

Mr. GROSVENOR: Yes, read it over please.

Q. Have you read it? A. Yes, I have read it.

Q. Now, were you present at that meeting? A. I was present during a part of the time at a meeting of some manufacturers and some importers but not at the meeting of the renters.

4 Q. The manufacturers and importers had a meeting at the same time and same place but separately from the meeting of the renters? A. Yes.

Q. Were these different manufacturers and importers named in this article represented there? A. I don't remember now who was there.

Q. Were there representatives of the Edison Company there? A. Yes.

Q. And of your company, you and Mr. Kennedy represented your company? A. Yes.



Q. Who represented the Edison Company? A. Mr. 1  
Moore.

Q. Was the Essanay Company represented? A. I  
don't remember.

Q. Was the Kalem Company? A. I don't remember  
that.

Q. The Kleine Optical Company? A. I think so, but I  
am not positive.

Q. The Lubin Company? A. I don't remember that.

Q. Melies? A. I think not, but I am not sure.

Q. Vitagraph Company? A. I think there were rep- 2  
resentatives of the Vitagraph Company there.

Q. Now, did you form one of a committee of manufac-  
turers who conferred with a committee of the film renters?  
A. No, I don't recollect that any such committee was ap-  
pointed, but there may have been.

Q. There may have been such a committee? A. There  
may have been.

Q. This meeting at Pittsburg, was on the dates indi-  
cated in this article, namely, November 16 and 17, 1907?  
A. I don't recall the date.

Q. It was about that time? A. I think it was about 3  
that time.

Q. Were you present at a subsequent meeting of the  
manufacturers or renters or of both, held in February, the  
early part of February, in the year 1908? A. Where?

Q. Well, anywhere? A. I can answer that as it is;  
I was not present at any other meeting of renters and  
manufacturers.

Q. After the formation of this film service association,  
and after the several manufacturers whom you have named  
entered into licenses with the Edison Company, you and  
the Kleine Company were jointly interested in the fight 4  
against the Edison licensees, were you not, you co-op-  
erated? A. Kleine, of the Kleine Optical Company, took  
a license from the Biograph Company together with two  
other parties.

Q. Have you a copy of that license? A. I have.

Q. You have it with you? A. Yes, I think I have.

Q. Will you let me see it? A. Yes. That is one of  
the things I think you asked me to bring (the witness now  
produces at the request of counsel for the Government memo-  
randum of agreement dated February 18, 1908, between

- 1 the American Mutoscope & Biograph Company, Williams, Brown and Earle and Kleine Optical Company and Charles E. Dressler & Company).

Mr. GROSVENOR: I offer that in evidence as Petitioner's Exhibit No. 57.

**Petitioner's Exhibit No. 57.**

- 2 MEMORANDUM OF AGREEMENT entered into this 18th day of February, 1908, between the AMERICAN MUTOSCOPE & BIOGRAPH COMPANY, a corporation organized under the laws of the State of New Jersey, and having a place of business at No. 11 East 14th Street, Borough of Manhattan, New York City, party of the first part, and WILLIAMS, BROWN & EARLE, a copartnership composed of Henry S. Williams, N. Howland Brown, and Morris Earle, doing business at No. 918 Chestnut Street, Philadelphia, Penna., party of the second part, and KLEINE OPTICAL COMPANY, a corporation organized under the laws of the State of Illinois, and having its principal place of business at Chicago, in the said State, party of the third part, and CHARLES E. DRESSLER & COMPANY, a corporation organized and existing under the laws of the State of New York, and doing business in New York City, party of the fourth part, WITNESSETH:

- 3 WHEREAS the parties of the first, second, third and fourth part hereto are all importers of Moving or Motion Picture Films, which are produced by various manufacturers in European countries, each of the said parties having certain exclusive rights to purchase for use in the United States from certain foreign manufacturers and having an established business in the sale of such imported films; and

4 WHEREAS the party of the first part is a manufacturer of such moving or motion picture films within the United States and a dealer in films of its own manufacture, and also a manufacturer and dealer in projecting machines such as are used for exhibiting moving or motion picture films, said projecting machines being covered by letters patent of the United States owned by said party; and

WHEREAS all the parties hereto are desirous of entering into an agreement for mutual protection of the businesses of the respective parties in films as hereinbefore described, and particularly against certain threatened patent litigation that may destroy or seriously affect such hereinbefore described businesses: 1

NOW, THEREFORE, in consideration of the premises, terms and conditions hereof, and in consideration of the mutual benefits to be derived from the carrying out of this agreement, and in consideration of one dollar to each of the parties by each of the others in hand paid, and for other good and valuable considerations, the receipt of all of which is hereby acknowledged or admitted, the parties hereto have agreed, and they do hereby mutually agree and also each party does severally agree individually to and with each of the other parties, as follows: 2

1. The party of the first part agrees to buy and the parties of the second, third and fourth parts agree to sell, upon the terms hereinafter stated, all rights that the said parties of the second, third and fourth parts now have or may hereafter acquire, to purchase from their several respective foreign manufacturers moving or motion picture films; there being expressly reserved to the parties of the second, third and fourth parts the right to purchase such films from the party of the first part, and also the right to sell and distribute the same according to the ordinary course of their respective businesses as the same are now or may hereafter be established. 3

2. The party of the first part agrees to sell and the parties of the second, third and fourth parts agree to buy from the party of the first part all films covered or described in the paragraph numbered (1) hereof at a price equal to one-half ( $\frac{1}{2}$ ) cent per lineal foot of film in advance of the prices covered by existing or future contracts between the respective parties of the second, third and fourth parts and their respective foreign principals. These provisions numbered 1 and 2 are understood and agreed to apply to all stocks of films of the parties of the second, third and fourth parts on hand on March 2nd, 1908. The terms of payment by the parties of the second, third and fourth parts to the party of the first part shall be as follows: Invoices for such advances 4



1 shall be rendered by the party of the first part upon the im-  
 portation of positive films, payment therefor to become due  
 upon sale thereof by any of the parties of the second, third  
 and fourth parts. As to stocks of positive films on hand on  
 March 2nd, 1908, invoices for one-half ( $\frac{1}{2}$ ) cent per lineal  
 foot shall be rendered and payment become due on sales of  
 such stocks. As to imported negatives, payment of one-half  
 ( $\frac{1}{2}$ ) cent per foot shall be made at once upon print-  
 ing of positives therefrom. As to positive films made in the  
 United States from imported negatives, invoices for one-half  
 ( $\frac{1}{2}$ ) cent per foot shall be made and payments become due  
 2 against sales of positives.

3 3. The party of the first part hereby agrees to license  
 the parties of the second, third and fourth parts to make,  
 use and vend the motion picture films described in section 4  
 hereof, for use in projecting machines such as are described  
 in the Latham United States patent No. 707934, dated  
 August 26th, 1902, and owned or controlled by the said  
 party of the first part, and it does so license the parties of  
 the second, third and fourth parts, upon the terms and con-  
 ditions of this agreement, or upon equally as favorable terms  
 and conditions as are now or may hereafter be established  
 by the said first party with reference to the use of films of its  
 own manufacture in such projecting machines; and upon the  
 further expressed conditions that motion picture films handled  
 by the said parties of the second, third and fourth parts,  
 shall be sold by them to established rental exchanges at not  
 less than a minimum price of eleven (11) cents per lineal  
 foot; and sold to all other customers at not less than a  
 minimum price of fourteen (14) cents per lineal foot; or  
 at such other prices as the party of the first part may here-  
 4 after determine and establish.

4. All the parties hereto agree that this agreement shall  
 extend to all importations of positive and negative films  
 from whatever producer, and to positive films therefrom  
 printed in this country; but not in any way to negatives  
 produced in this country or to apparatus for producing nega-  
 tives.

5. The party of the first part agrees for itself that it  
 will defend, through its own counsel and at its own expense,

any and all suits for past, present and future infringement of patent or patents upon moving or motion picture films covered by this agreement that may be brought against any of the parties of the second, third and fourth parts, their customers and vendees, and hold them harmless therefrom; and it further agrees that all films covered by this agreement shall be treated equally as favorably as films of the party of the first part with respect to patents of the said first party upon projecting machines.

6. All of the parties hereto agree that the term of this agreement shall be seven years from the date hereof; and that at the end of seven years its obligations shall forthwith terminate except (1) as to pecuniary obligations incurred but not discharged at the date of expiration, and (2) in the event that there shall then be any patent infringement suit such as is specified in the paragraph numbered 5 hereof pending and undetermined at such date of expiration, in which event the obligation resting upon the party of the first part with reference to such suit shall continue so long as the payments provided for herein shall continue.

7. It is agreed by the parties of the second, third and fourth parts severally that, immediately upon the threat or actual commencement of patent litigation against them or any of their customers or vendees involving positive or negative films imported into this country or positive films printed in this country for imported negatives as alleged infringements of any patent, they will give notice thereof to the party of the first part and they will do all things necessary or desirable to enable the party of the first part to take immediate charge of such litigation in its own name and at its own expense and through its own counsel.

8. It is agreed by all the parties hereto that others situated substantially the same as the parties of the second, third and fourth parts, may be admitted to the benefits and privileges of this agreement upon terms not more favorable to such others than are herein set forth, provided that such proposed parties are handling marketable imported films or films manufactured from marketable imported negatives; and the party of the first part is empowered to enter into written agreements similar to the present one with such

1 proposed parties, unless a majority of the parties hereto shall file written objections with the party of the first part after written notice of its intention first given.

2 9. The party of the first part agrees for itself that, in the event that it shall hereafter license any American manufacturer of moving or motion picture films under camera patents now owned or hereafter acquired by said party, it will impose upon such manufacturer terms not more favorable to such manufacturer as to the sale of films than are hereinbefore set forth.

10. All the parties hereto agree that any of the parties of the second, third and fourth parts may assign his, their or its interest in this agreement, in whole or in part, with the written consent of the party of the first part, and that upon such assignment this agreement shall become binding upon the assignee or assignees. All the parties hereto further agree that, in the event that the party of the first part shall become insolvent, or shall be adjudicated a bankrupt, this agreement shall thereby terminate and be at an end.

3 IN WITNESS WHEREOF the parties hereto have caused these presents to be executed and attested in the following manner, to-wit, the American Mutoscope & Biograph Company has caused its common seal and the signatures of its President and Secretary to be hereto respectively affixed and subscribed, the copartnership of Williams, Brown & Earle by the hands of Henry S. Williams and N. Howland Brown, two of the members of said copartnership duly authorized thereto, the Kleine Optical Company has caused its common seal and the signature of its President to be hereto  
4 respectively affixed and subscribed, and Charles E. Dressler & Company has caused its common seal and the signature of its Treasurer to be hereto respectively affixed and subscribed;



all of which is done on this 18th day of February, in the year one thousand nine hundred and eight. 1

AMERICAN MUTOSCOPE & BIOGRAPH  
COMPANY.

By (Sd.) J. J. Kennedy,  
[SEAL.] President.

Attest:

(Sd.) James A. Gausman,  
Secretary.

Signed, sealed and delivered  
in the presence of:  
(Sd.) Drury W. Cooper.

2

WILLIAMS, BROWN & EARLE.

By (Sd.) Henry S. Williams, [SEAL.]  
N. Howland Brown, [SEAL.]

KLEINE OPTICAL COMPANY.

By (Sd.) George Kleine,  
President.

CHARLES E. DRESSLER & COMPANY.

By (Sd.) George F. Bauerdorf,  
Treasurer.

3

In presence of  
(Sd.) Drury W. Cooper.

---

By Mr. GROSVENOR:

Q. Have you produced any other papers in response to the subpoena? A. Yes, I produced a circular called "The Facts."

4

Q. This is a small pamphlet and it is the same thing as that printed in the Moving Picture World at page 205, and which has already been introduced in evidence as Exhibit 55? A. Yes. I have not checked that through and I do not recall the paper word by word, but it seems to be substantially the same.

I produce all the correspondence that I have been able to find that is called for in the subpoena.

Q. I return to you the correspondence which you have handed me, Mr. Marvin, and will take it up later with you.

- 1 A. I produce the original of an agreement between the American Mutoscope Company and Messrs. Casler, Marvin, Koopman and Dickson, covering the right to manufacture Mutoscope goods for export only, dated the 12th day of March, 1898, and having attached to it a copy of the resolution of the Board of Directors of the American Mutoscope Company authorizing such agreement.

- I produce a copy of an agreement dated February 10, 1904, between the Armat Moving Picture Company of Washington, and the American Mutoscope and Biograph Company of New Jersey, consisting of a limited license  
2 under the same patent owned by the Armat Company.

I also produce a memorandum of agreement dated the 21st day of March, 1908, between the Armat Moving Picture Company and the American Mutoscope and Biograph Company constituting a further license agreement between the parties. These are those two Armat licenses that you asked for yesterday.

I will state now that the Biograph Company paid the sum of twenty-five hundred dollars for the Latham patent.

I think that is all that I have been called upon to produce.

- 3 Do you want me to keep these letters?

Q. Yes. You will let me see them after this morning's session? A. Yes.

Q. Mr. Marvin, after the Kleine Optical Company took out a license with you in the early part of 1908, was not a suit brought on this film patent 12192 against that company in Chicago? A. I think so, but I don't know definitely.

Q. A large number of suits were brought against theatres located around or about Chicago which were buying or renting films from you or films imported by the Kleine Optical Company? A. I believe that is true.

- 4 Q. There were about forty or more such suits instituted? A. I think so.

Q. In the answer of the Patents Co. at page 33 it states at the top of the page that forty-six suits on the Edison film reissued patent 12192 were brought, one of the defendants being the defendant Biograph Company, and another, the defendant Kleine Optical Company. This number of suits that were brought in Chicago against the Kleine Company in 1908, and against these theatres numbering, as you say, about

forty, are included in that number of forty-six suits stated in your answer on page 33? A. Yes, I believe so. 1

Q. Then, as a matter of fact, this multifarious litigation that arose on patent 12192 arose in 1908, after you and the Kleine Company had refused to join in with the other Edison licensees? A. It began after the other manufacturers took licenses from the Edison Company. I don't know that Kleine refused to take a license from the Edison Company.

Q. This is the same patent referred to in this statement of yours entitled, "The Facts," and being Exhibit 55, where you stated that no suit on this patent 12,192, so far as you know, had been pressed against anybody for the past five years? A. Yes, that is the same patent. 2

Q. And during all this time, that is, during this period of five years, all these manufacturers were selling this motion picture film generally throughout the United States? A. Some of them were; I don't know that all of them were during all of that time.

Q. Well, in the year 1907, they all were? A. I think they were during some portion of the year 1907.

Q. In this statement issued to the trade (Exhibit 55), you have printed in heavy black type from the decision of Judge Wallace, in 114 Federal, being on the original patent and referring to Edison, the words, "He was not the inventor of the film;" and you printed the same words again in heavy black type, taken from the opinion of Judge Lacombe, in 151 Federal, where he says: "He was not the inventor of the film." You are referring in this document there, are you not, by this film, to the same sort of motion picture film as you now claim is covered by patent No. 12,192? A. No, I didn't refer to that film, and I never understood the statements of either of these Courts to refer to that film. I understood their statements to refer to the raw stock upon which the motion pictures were printed and the fact that Mr. Edison did not claim to have invented the raw stock or basic material upon which the motion pictures were printed, seemed to lessen his chances of sustaining a patent upon the motion picture strip. 3 4

Q. The raw stock, that is, the raw sensitized film, you admit is the creation of the Eastman Kodak Company? A. The basic material, comprising the celluloid base with sensitized emulsion coating, I understand to be the invention of



1 the Eastman Kodak Company, or somebody connected therewith.

Q. The Motion Picture Patents Company owns no patent covering the manufacture of that film, does it, that is, the raw stock? A. It owns no patent covering the manufacture of raw stock.

Q. Mr. Marvin, taking up the Latham patent. You stated that you purchased that in the year 1908 for \$2,500? A. Yes.

Q. That patent had been issued five years previously? A. About that.

2 Q. In your answer you state, at page 33, "Prior to December, 1908, nine suits had been brought by the Biograph Company under the Latham patent, 707,934, dated August 26, 1903" against the companies that you named, including the Edison, etc. These suits were all brought by you after February, 1908, were they not? A. Yes.

Q. And after you had refused to join in with the other Edison licensees? A. Yes.

3 Q. Did you not bring those suits in part as matters of retaliation against the Edison Company for the suits that were being brought against Kleine and these other theatres under this patent 12,192, upon which you have stated no suit had been pressed for five years? A. No, I did not. We brought those suits for the purpose of enforcing the patents and securing the revenue under them.

Q. Had you been infringing the Latham patent before you bought it? A. Yes, we did.

4 Q. For how many years? A. I don't recollect the exact time, but the limited use that we made of the Warwick camera, infringed the Latham patent. The question as to whether the Biograph camera infringed the Latham patent or not, was one concerning which we had doubt. The owners of the Latham patent claimed that the Biograph camera did infringe the Latham patent and from time to time threatened to bring suit under that patent.

Q. Has it been held that the Latham patent does not apply to moving picture cameras?

MR. CALDWELL: I object to that as incompetent, the only competent proof of that point being the decree of the Court itself, if there is such a decree.

A. I understand that in a very recent decree of the Court of Appeals, two members of the Court held that the Latham patent did not cover cameras and one member held that it did cover cameras. 1

Q. Had not the Latham patent been disregarded generally in the trade by all the manufacturers for a period of four or five years as being of no value? A. I cannot say definitely as to that, because the former owners of the Latham patents were not financially able to bring suits under that patent against infringers, and therefore no suits had been started to my knowledge, and I am therefore unable to know anything about the attitude of the people who were infringing the patent. 2

Q. Do you mean that where the owner of the patent was financially unable to bring suit to maintain his right under the patent, the manufacturers of these moving pictures deliberately infringed his patent? A. I think that was customary with them, as I believe it is customary with all other manufacturers.

Q. Now, name some of the companies which were taking that high stand? A. What high stand do you refer to?

Q. Of infringing the rights of the Latham patent when he was unable to bring suit? A. The Biograph Company, the Edison Manufacturing Company, Pathe Freres, Vitagraph Company, Kalem Company, G. Melies, Essanay Company, the Selig Polyscope Company, and all of the users of projecting machines throughout the United States. 3

Q. Had there been any court decision upholding the Latham patent as applied to cameras? A. Not as I know, only the exhaustive opinion of Judge Coxe I believe, in the case I have mentioned above, and I don't know whether that is considered a decision or merely an opinion.

Q. Is that a decision of the Circuit Court of Appeals? A. Yes. 4

Q. They did not sustain the patent. They held that it was invalid so far as the moving picture cameras were concerned, did they not? A. That I did not quite understand; I merely say that that opinion of this Judge of that divided court sustained it partially—I don't know that that is what you mean by an opinion of the court—it was the opinion of one member of the court.

Q. Then other than that dissenting opinion of Judge Coxe

1 in the Circuit Court of Appeals, you know of no court opinion sustaining the Latham patent? A. Well, we had a suit against the Viascope Company in Chicago.

Q. The Vitascope? A. No, the Viascope.

Q. Whom do you mean by "we?" A. The Motion Picture Patents Company, in which they were sued for infringement of some of the patents of the Motion Picture Patents Company, and we won the suit, and the Viascope Company was enjoined, but I don't recollect distinctly whether the Latham patent was one of the patents that was sued on or not; the records will show.

2 Q. The Viascope Company did not defend—it is a poor company? A. I don't think they made much of a defense.

Q. Were you ever interested in any proceedings, and I mean by you, Marvin and Casler, or Biograph Company, in the Patent Office, relating to the Latham patent on the question of whether or not it applied to projecting machines—and if so, was it not held in that proceeding there that Latham's patent or his specifications did not apply to projecting machines?

3 Mr. WILLIS: I object to that as incompetent.

A. I don't so understand it. I think the proceeding to which you have reference was an interference proceeding at the time Latham's patent was in the office.

Q. An interference proceeding with Armat, was it? A. An interference proceeding in which were involved Latham, Casler, Armat, and I think a man named Amat, of Chicago. The issue in that interference, as I remember it, was over a film feeding device in which the interval of pause and illumination exceeded the interval of rest. That interference was finally decided in favor of Amat.

4 Q. Do you know of any other litigation or proceedings on the Latham patent other than those you have named? A. Well, I believe that we have some suits now pending on the Latham patent.

Q. Those suits have all been brought since the Patents Company was formed? A. Yes, sir.

Q. Did you consult or confer with Kleine—George Kleine—in the preparation of his answer against the Edi-



son Company in this suit which they brought in 1908, against him, or the Kleine Optical Company after the drawing up and signing of the contracts between the Edison Company and the Edison licensees? A. I believe I did not.

Mr. GROSVENOR: I will introduce at this time, the decision of the Circuit Court of Appeals of the Second Circuit referred to previously in the examination of this witness, being reported at 114 Federal Reporter, 926, as Petitioner's Exhibit No. 58.

I also introduce the second opinion of the same Court already referred to in the testimony of the witness and which is at 151 Federal Reporter, 167, as Petitioner's Exhibit No. 59.

I also introduce in evidence the decision of the Court of Appeals of the District of Columbia, December 2nd, 1912, in the case of the Motion Picture Patents Company vs. The Chicago Film Exchange, as Petitioner's Exhibit No. 60.

Said exhibits in the order stated are as follows:

### **Petitioner's Exhibit No. 58.**

II. Edison v. American Mutoscope Co.

On original Patent 589,168.

Circuit Court of Appeals, Second Circuit.

114, Fed. Rep., 926.

Before Wallace, Lacombe, and Townsend, Circuit Judges.

Wallace, Circuit Judge. This is an appeal from a decree sustaining the validity, and adjudging the infringement by the defendant, of letters patent No. 589,168, for a kinetographic camera, granted to Thomas A. Edison August 31, 1897. The patent contains six claims; the first, second, third, and fifth being the only ones in controversy. The assignments of error challenge the validity of the claims, and contest the infringement of the fifth claim.

The purpose of the patented invention is to produce

1 pictures, "representing objects in motion throughout an extended period of time, which may be utilized to exhibit the scene including such moving objects in a perfect and natural manner by means of a suitable exhibiting apparatus," such as that described in Edison's patent No. 493,426, granted March 14, 1893. The specification states that the inventor "has found it possible to accomplish this end by means of photography." It further states that the photographic apparatus comprises means, such as a single camera, for intermittently projecting, at such rapid rate as to result in persistence of vision, images of successive positions of the object or  
2 objects in motion as observed from a fixed and single point of view, a sensitized tape-like film, and means for so moving the film as to cause the successive images to be received thereon separately and in single-line sequence. It further states that the movements of the tape-like film may be continuous or intermittent, but the latter is preferable, and that it is further preferable that the periods of rest of the film should be longer than the periods of movement. It further states that, by taking the photographs at a rate sufficiently high as to result in persistence of vision, the developed photographs will, when brought successively into view by an exhibiting apparatus, reproduce the movements faithfully and  
3 naturally. The patentee says:

"I have been able to take with a single camera and a tape film as many as forty-six photographs per second, each having a size measured lengthwise of the tape of one inch, and I have also been able to hold the tape at rest for nine-tenths of the time; but I do not wish to limit the scope of my invention to this high rate of speed, nor to this great disproportion between the periods of rest and the periods  
4 of motion, since with some subjects a speed as low as thirty pictures per second, or even lower, is sufficient, and, while it is desirable to make the periods of rest as much longer than the periods of motion as possible, any excess of the periods of rest over the periods of motion is advantageous."

As more particularly described in the specification and shown in the drawings, the apparatus, which is inclosed in a boxlike casing, from which light will be excluded, except

through the lens, embraces an ordinary adjustable camera 1  
having the lens end mounted in the side of the box. Two  
reels, inclosed in suitable cases, are located on opposite  
sides of the camera lens. The film is drawn from one of the  
reels on to the other across the lens. It is transparent or  
translucent, and tapelike in form and is preferably of suf-  
ficient width to admit the taking of pictures one inch in  
diameter between the rows of holes on its edges. These  
holes are for engagement with the feed wheels for positive-  
ly advancing the film. When the film is narrow it is not  
essential to use two rows of perforations and two feed 2  
wheels, one of such rows and one feed wheel being suffi-  
cient. The two feed wheels are carried by a shaft, and en-  
gage the film on one side of the camera opening. The  
power is supplied by an electric motor which drives a  
rotating shaft carrying the feed wheels through a pulley  
held in frictional engagement with the feed-wheel shaft.  
The take-up reel, or the reel which receives the tape after  
passing the lens, is also driven from the motor shaft  
through a pulley which is frictionally mounted upon the  
reel shaft. The shaft carrying the feed wheels is controlled 3  
by a stop or escapement movement which is driven posi-  
tively by another shaft, so that, although the motor tends  
to drive the feed wheels continuously, they are only per-  
mitted to turn with an intermittent motion by the stop or  
escapement device; the pulley which drives the feed wheels  
slipping on the feed-wheel shaft while that shaft is held  
at rest by the stop or escapement device. A shutter con-  
sisting of a rotating disk having an opening in it is mount-  
ed directly upon the motor shaft, and revolves past the  
lens, so that the light from the lens is intermittently thrown  
upon and cut off from the sensitive surface of the film.  
The camera is shown as a single lens, and is arranged to 4  
project the image of the scene being photographed upon the  
film when the openings of the shutter disk are opposite the  
aperture between the lens and the film. In operation the  
apparatus is first charged with a tape film several hun-  
dred or even thousands of feet in length. The specifica-  
tion states that the parts are preferably proportioned so  
that the film is at rest for nine-tenths of the time, in or-  
der to give the sensitized film as long an exposure as practi-  
cable, and is moving forward one-tenth of the time, and



- 1 that the forward movement is made to take place 30 or more times per second, and preferably at least as high as 46 times per second, although the rapidity of movement or number of times per second may be regulated as desired to give satisfactory results; and there should be at least enough so that the eye of the observer cannot distinguish, or at least cannot clearly or positively distinguish, at a glance, the difference in position occupied by the objects in the successive pictures.

The claims alleged to be infringed are as follows:

- 2 “(1) An apparatus for effecting by photography a representation, suitable for reproduction, of a scene including a moving object or objects, comprising a means for intermittently projecting, at such rapid rate as to result in persistence of vision, images of successive positions of the object or objects in motion, as observed from a fixed and single point of view, a sensitized, tapelike film, and a means for so moving the film as to cause the successive images to be received thereon separately and in a single-
- 3 line sequence.

“(2) An apparatus for taking photographs suitable for the exhibition of objects in motion, having in combination a single camera, and means for passing a sensitized tape film at a high rate of speed across the lens of the camera, and for exposing successive portions of the film in rapid succession, substantially as set forth.

- 4 “(3) An apparatus for taking photographs suitable for the exhibition of objects in motion, having in combination a single camera, and means for passing a sensitized tape film across the lens of the camera at a high rate of speed, and with an intermittent motion, and for exposing successive portions of the film during the periods of rest, substantially as set forth.”

“(5) An unbroken transparent or translucent tapelike photographic film, having thereon equi-

distant photographs of successive positions of an object in motion, all taken from the same point of view, such photographs being arranged in a continuous, straight-line sequence, unlimited in number, save by the length of the film, substantially as described."

1

According to the views of the expert for the complainant, the first claim covers every apparatus comprising—First, any means whatever capable of intermittently projecting, at such rapid rate as to result in persistence of vision, images of successive positions of the object or objects in motion, as observed from a fixed and single point of view; second, a sensitized, tapelike film; and, third, any means or mechanism or device for so moving the film, either continuously or intermittently, or both continuously and intermittently, as to cause the successive images to be received thereon separately and in a single-line sequence. According to his view, the scope of the second claim is identical with that of the first, except that it is limited to a single camera, with a single lens, as the means for projecting the images onto the sensitized surface, and the third claim differs from the second only in that it is restricted to the intermittent movement of the film, and to the exposure of the film during the periods of rest. We think this interpretation of the claim is the reasonable one, and the question of their validity is to be determined by giving to them this scope.

2

3

The photographic reproduction of moving objects, the production from the negatives of a series of pictures representing the successive stages of motion, and the presentation of them by an exhibiting apparatus to the eye of the spectator in such rapid sequence as to blend them together, and give the effect of a single picture in which the objects are moving, had been accomplished long before Mr. Edison entered the field. The patent in suit pertains merely to that branch of the art which consists of the production of suitable negatives. The introduction of instantaneous photography, by facilitating the taking of the negatives with the necessary rapidity to secure what is termed "persistence of vision," led to the devising of cameras for using sensitized plates and bringing them successively

4

1 into the field of the lens, and later for using a continuously  
moving sensitized band or strip of paper to receive the suc-  
cessive exposures. The invention of the patent in suit  
was made by Mr. Edison in the summer of 1889. We  
shall consider only those references to the prior art which  
show the nearest approximation to it, and are the most  
valuable of those which have been introduced for the pur-  
pose of negating the novelty of its claims.

2 The French patent to Du Cos, of 1864, describes a  
camera apparatus consisting of a battery of lenses placed  
together in parallel rows and focused upon a sensitive  
plate; the lenses being caused to act in rapid succession,  
by means of a suitable shutter, to depict the successive  
stages of movement of the object to be photographed. Be-  
tween the lenses and the plate is arranged a band having  
a series of openings in such manner that if the band is  
drawn upwards or downwards the various lenses in the  
battery will be exposed in succession, so that a large num-  
ber of small pictures will be taken upon the plate. The  
patent does not describe the means for moving the plate  
so as to cause the successive images to be received thereon  
3 separately. In a certificate of addition to this patent, he  
describes an apparatus in which there is a short, endless  
band, passing over two parallel drums, upon which, as the  
band is moved by the rotation of the drums, one lens after  
the other will pass an aperture through which light is re-  
flected from the object to be photographed. Back of the  
lenses is another band of fabric, passing over drums like  
the other band, and carrying either a series of sensitized  
plates or a surface of sensitized paper. This band has pro-  
jections or pins, which, as the drums are rotated, engage  
with corresponding projections from the band carrying the  
4 lenses. By this apparatus the lenses are made to move in  
accord with the movement of the band, and as they pass  
the aperture they project successively upon the sensitized  
paper, which is moving at the same speed, impressions of  
the object to be photographed. Practically the images are  
reproduced from the same point of view—the aperture  
through which the lenses operate. The expert for the com-  
plainant, Prof. Morton, concedes that the Du Cos camera  
would be capable of taking a series of photographs on a  
strip of sensitized paper, such as subsequently came into



commercial use, at the rate of eight or ten a second, sup-  
posing them to be two or three inches square; but he in-  
sists that the dry paper then known was not sufficiently  
sensitized to permit this to be done.

Prior to January, 1888, a sensitive film better adapted  
for instantaneous impression was in commercial use with  
photographers, and in that month a patent was obtained  
in this country by Le Prince for a method of, and ap-  
paratus for, producing animated pictures. The apparatus  
included a camera for producing the negatives upon an end-  
less strip of sensitive film, "or any quick-acting paper, such  
as Eastman's paper film." The camera apparatus was a  
series of lenses arranged in two or more rows, and two or  
more strips of film. Each strip of film is unwound from  
a supply spool, and drawn across the field of its row of  
lenses by a take-up spool. The lenses are provided with  
shutters which open and allow them to operate upon the  
film at the proper time. By means of mutilated guides upon  
a shaft operated by a crank or other motor, the two take-  
up spools are alternately revolved, and draw first one  
film and then the other the required distance to receive  
its series of impressions, while by means of other guides  
connected with the driving shaft the shutters of the lenses are  
successively opened to permit an impression to be projected  
upon the film while it is at rest. Thus the apparatus is  
equipped with means for moving two strips of film alter-  
nately and successively, and with lenses and shutters  
which at the proper moment open and allow the lenses  
to operate upon the strips of film as they are successively  
brought to rest. Le Prince subsequently, and in 1888, ob-  
tained an English patent for the same apparatus, a com-  
plete specification of which was published December 8,  
1888. This patent contains a suggestion that only a single  
lens may be employed, as follows:

"When provided with only one lens, as it some-  
times may be, it is so constructed that the sensi-  
tive film is intermittently operated at the rear of  
said lens, which is provided with a properly timed  
intermittently operated shutter."

The mechanism adapted to co-operate with a single-  
lens camera is not described.

1       The camera apparatus of M. Marey, described in the  
Scientific American of June, 1882, and used by him, mount-  
ed in a photographic gun, to produce a series of instan-  
taneous photographs showing the successive phases of mo-  
tion of birds and animals, describes a single-lens camera,  
and clock mechanism which actuates the several parts. The  
apparatus is shown in detail by woodcuts. M. Marey con-  
ceived the idea of equipping a gun with the apparatus from  
the astronomical revolver invented by Mr. Janssen for ob-  
serving the last passage of Venus. He describes the appa-  
2       ratus as follows:

3       “The barrel of this gun is a tube containing a  
photographic objective. At the back end of this,  
firmly affixed to the butt, there is a wide, cylin-  
drical breech piece, in which there is contained a  
clockwork, whose barrel is seen externally at B.  
When the trigger of the gun is pulled, the wheel-  
work begins its movement, and gives the various  
parts of the instrument the motion necessary. A  
central axis, making twelve revolutions per second,  
controls all the parts of the apparatus. First, there  
is an opaque, metallic disk, containing a narrow  
slit. This forms the cut-off or shutter, and allows  
the light emanating from the objective to enter  
only twelve times per second, and every time during  
1-720th of a second. Behind this disk, and re-  
volving freely on the same axis, there is another  
one which is provided with twelve openings, and  
behind this is placed the sensitive plate of circular  
or octagonal form. The disk must revolve in an  
intermittent manner, so as to stop twelve times per  
4       second opposite the fascicle of light that enters the  
instrument. This motion is obtained by means of an  
eccentric, E, which is placed on the axis, gives a  
regular to and from motion to a rod provided  
with a click, C, which at every oscillation engages  
with one of the teeth that collectively form a crown  
on the disk containing the apertures. A special  
shutter, O, cuts off all entrance of light into the  
instrument as soon as the twelve images have been  
obtained. There are other arrangements for the

purpose of preventing the sensitized plate, owing to its acquired velocity, going beyond the position to which it is brought by the click, and at which it should be perfectly immovable during the duration of the luminous impression. A pressing button, *b*, rests firmly against the plate from the time that it is introduced into the apparatus; and it is through the influence of such pressure that the plate is made to adhere to the posterior surface of the disk containing the apertures. This surface is covered with black velvet to prevent slipping. Focusing is effected by shortening or elongating the barrel, thus moving the objective backward or forward. The focus is finally verified by observing, through an aperture in the breech piece, the sharpness of the image received on a piece of ground glass."

He states that he has photographed with his apparatus horses, asses, dogs, and men on foot and on velocipedes, but he has not followed such experiments up, as they entered into the programme that Mr. Muybridge had carried out with so much success. He proposes especially to study by photography the mechanism of flight in different animals.

Mr. Levinson, in an article published in the Brooklyn Eagle of June 14, 1888, describes a camera apparatus for taking a series of pictures of objects in motion, in which a single lens is employed to operate upon plates  $3\frac{1}{4}$  by  $4\frac{1}{4}$  inches in size. These plates are carried in compartments on a polygonal wheel, which is caused to move onward and rest by a peculiar screw motion, and while at rest an electromagnet, actuated by a suitable battery, operates the shutter and exposes the plate, then in proper position for the lens. He says the mechanism employed to drive the plate carrier could be employed to operate a continuous strip of paper or a film carrier, and by a simple modification of the contact-switch the shutter may be operated indefinitely; and with a camera thus constructed a series of pictures, limited only by the length of the sensitive paper, may be taken. The mechanism of the apparatus is not detailed, except in the general way stated.

It is apparent from the references considered that while Mr. Edison was not the first to devise a camera apparatus for



- 1 taking negatives of objects in motion, and at a rate sufficiently high to result in persistence of vision, the prior art does not disclose the specific type of apparatus which is described in his patent. His apparatus is capable of using a single sensitized and flexible film of great length with a single-lens camera, and of producing an indefinite number of negatives on such a film with a rapidity theretofore unknown. The Du Cos apparatus requires the use of a large number of lenses in succession, and both the lens and the sensitized surface are in continuous motion while the picture is being taken; whereas in the apparatus of the patent but a single
- 2 lens is employed, which is always at rest, and the film is also at rest at the time when the negative is being taken. Nor is it provided with means for passing the sensitized surface across the camera lenses at the very high rate of speed, which is a feature, though not an essential feature, of the patented apparatus.

- The Le Prince apparatus employs two or more rows of lenses, and two or more strips of film, which move alternately and successively, the lenses of each operating upon its appropriate strip, and the shutters of the lenses opening successively as the strips are brought to rest; and, although its
- 3 devices permit the exposures for the production of successive pictures to be made in rapid succession, they require a slow movement of the film. Pictures taken in such apparatus are not taken from the "same point of view" as they are when taken from a single stationary lens. This would result in producing, when such pictures are subsequently combined for persistence of vision in their exhibition, a greater or less
- indefiniteness of outline and conformation as to movement. Again, the pictures are not taken in a regular succession, as on a single strip, but a short series are taken on one strip, then a short succeeding series on another strip, and so on,
- 4 with the result that to use these pictures for exhibition in any convenient way would require them to be cut up and rearranged, or apparatus would have to be employed for so moving and feeding them as to obtain the proper arrangement of their positives for the purposes of exhibition, which is indicated in the Le Prince patent. Those taken by the apparatus of the patent in suit can be reproduced by a precisely corresponding positive. The suggestion that one lens may be employed, implying, of course, the use of a single film, is quite enigmatical, and would seem to be impractic-

able, without altering the principle of his apparatus. The 1  
problem of dispensing with the other lenses would involve  
changing the mechanism so as to secure a rapid movement  
of the film. We are not satisfied that the apparatus is in-  
operative, but incline to the opinion that the alleged defects  
are merely in details of construction, which would be readily  
obviated by the skilled mechanic. The presumption arising  
from the grant of the United States patent must prevail in  
the absence of proof to overthrow it.

The Marey apparatus employs the same general combina-  
tion of parts specified in the first and third claims of the 2  
patent, except the tape film, to produce the negatives; but it  
is not adapted to produce them upon the film of the patent,  
and it would require modifications to enable it to do so; but  
whether such as would involve invention, or merely mechan-  
ical skill, is a debatable question. It enables negatives of  
an animate object, showing the various phases of motion, to  
be produced by projecting images of the moving object, as  
observed from a fixed and single point of view, or  
from a fixed and successive point of view, upon the  
successively advanced portions of the sensitized surface, and  
in sequence thereon, and at such a rapid rate of succession 3  
that the movements can be naturally reproduced to the eye  
by bringing the developed photographs successively into  
view. It is capable of taking 12 pictures per second, each  
image requiring an exposure of  $\frac{1}{720}$ th part of a second.  
Although his revolver was designed to get successive pictures  
for an analysis of the movements of objects, and not for the  
purpose of taking negatives for reproduction and use in an  
exhibiting apparatus, it seems manifest that it could have  
been adapted by changes in the parts, obvious to the skilled  
mechanic, to produce negatives suitable for reproduction and  
use in such an apparatus.

The Levison publication would not be of value were it not 4  
that the broad claims of the patent do not call for the em-  
ployment of any specific operative devices, except the single  
camera and the sensitized tape film.

The important question is whether the invention was in  
such sense a primary one as to authorize the claims based  
upon it. The general statements in the specification imply  
that Mr. Edison was the creator of the art to which the  
patent relates, and the descriptive parts are carefully framed  
to lay the foundation for generic claims which are not to be

1 limited by importing into them any of the operative devices,  
except those which are indispensable to effect the functional  
results enumerated. It will be observed that neither the  
means for moving the film across the lens of the camera, nor  
for exposing successive portions of it to the operation of  
the lens, nor for giving it a continuous or intermittent mo-  
tion, nor for doing these things at a high rate of speed, are  
specified in the claims otherwise than functionally. Any  
combination of means that will do these things at a high  
enough rate of speed to secure the result of persistence of  
vision, and which includes a stationary single lens and tape-  
2 like film, is covered by the claims.

It is obvious that Mr. Edison was not a pioneer, in the  
large sense of the term, or in the more limited sense in which  
he would have been if he had also invented the film. He was  
not the inventor of the film. He was not the first inventor  
of apparatus capable of producing suitable negatives, taken  
from practically a single point of view, in single-line se-  
quence, upon a film like his, and embodying the same general  
means of rotating drums and shutters for bringing the sen-  
sitized surface across the lens, and exposing successive por-  
tions of it in rapid succession. Du Cos anticipated him in  
3 this, notwithstanding he did not use the film. Neither was  
he the first inventor of apparatus capable of producing suit-  
able negatives, and embodying means for passing a sensi-  
tized surface across a single-lens camera at a high rate of  
speed, and with an intermittent motion, and for exposing  
successive portions of the surfaces during the period of rest.  
His claim for such an apparatus was rejected by the patent  
office, and he acquiesced in its rejection. He was anticipated  
in this by Marey, and Marey also anticipated him in photo-  
graphing successive positions of the object in motion from  
4 the same point of view.

The predecessors of Edison invented apparatus, during a  
period of transition from plates to flexible paper film, and  
from paper film to celluloid film, which was capable of pro-  
ducing negatives suitable for reproduction in exhibiting ma-  
chines. No new principle was to be discovered, or essentially  
new form of machine invented, in order to make the im-  
proved photographic material available for that purpose.  
The early inventors had felt the need of such material, but  
in the absence of its supply, had either contented themselves  
with such measure of practical success as was possible, or



had allowed their plans to remain upon paper as indications of the forms of mechanical and optical apparatus which might be used when suitable photographic surfaces became available. They had not perfected the details of apparatus especially adapted for the employment of the film of the patent, and to do this required but a moderate amount of mechanical ingenuity. Undoubtedly Mr. Edison, by utilizing this film and perfecting the first apparatus for using it, met all the conditions necessary for commercial success. This, however, did not entitle him, under the patent laws, to a monopoly of all camera apparatus capable of utilizing the film. Nor did it entitle him to a monopoly of all apparatus employing a single camera.

We conclude that the functional limitations which are inserted in the claims do not restrict the patent to the scope of Mr. Edison's real invention. We cannot undertake to point out the differences between the scope of the real invention and the claims. The real invention, if it involved invention as distinguished from improvement, probably consists of details of organization, by which the capacity of the reels and the moving devices are augmented and adapted to carry the film of the patent rapidly and properly. It suffices to say that the modifications required to conform old apparatus to the use of the tape film, and which would define the real invention, cannot be imported into the first and third claims without violence to their terms; and the second claim is broader than the third.

The fifth claim of the patent is obviously an attempt by the patentee to obtain a monopoly of the product of the apparatus described in the patent, so that in the event it should turn out that his apparatus was not patentable, or the product could be made by apparatus not infringing his, he could nevertheless enjoy the exclusive right of making it. A claim for an article of manufacture is not invalid merely because the article is the product of a machine, whether the machine is patented or unpatented; but it is invalid unless the article is new in a patentable sense,—that is, unless its original conception or production involved invention, as distinguished from ordinary mechanical skill. If it is new only in the sense that it embodies and represents superior workmanship, or is an improvement upon an old article in degree and excellence, within all authorities the

- 1 claim is invalid. *Hatch v. Moffitt* (C. C.) 15 Fed. 252; *Wooster v. Calhoun*, 11 Blatchf., 215, Fed. Cas. No. 18,035; *Excelsior Needle Co. v. Union Needle Co.* (C. C.) 32 Fed., 221; *Smith v. Nichols*, 21 Wall, 112, 22 L. Ed., 566; *Locomotive Works v. Medart*, 158 U. S., 79, 15 Sup. Ct., 745, 39 L. Ed., 899. By the terms of the claim the length of the film is not defined, nor is the number of photographs which it is to represent defined. It is to be an unbroken transparent or translucent, tapelike, photographic film; it is to have thereon equidistant photographs of successive positions of an object in motion; these photographs are to be arranged in a continuous, straight-line sequence; and the number of them is not limited, save by the length of the film. The film was not new, and if the other characteristics of the product are not new, or are new only in the sense that they add to the article merely a superiority of finish or a greater accuracy of detail, the claim is destitute of patentable novelty.
- 2

- In determining the scope and patentable subject-matter of this claim, the proceedings in reference to its allowance in the patent office should be referred to. In the original application for the patent the sensitized surface was described as "in the form of a long gelatine tape film." April 18, 1896, the application was amended as to specification and claims so that the word "gelatine" was omitted from the description of the film. The substituted specification of that application contains this statement: "The sensitized surface is preferably in the form of a long tape, although it may be a cylindrical surface on which the photographs are taken in a spiral line;" and, in referring to the drawings, states that "3 indicates the transparent or translucent tape film, which before the apparatus is put in operation is all coiled on a reel," etc. In that application, for the first time, a claim was made for the product. After the claim, as originally phrased in that application, had been rejected by the patent office, it was amended by the applicant to read as follows:
- 3
- 4

"(8) An unbroken transparent or translucent tape film, having thereon a continuous series of equidistant photographs of an object in motion, arranged in a single straight-line sequence, substantially as set forth."

This claim was again rejected upon a reference to the Le

Prince patent. As finally allowed by the office, it was allowed upon the statement as follows: 1

“As to claims 8 and 9, while as drawn they have been properly rejected on account of the Le Prince tape film, they can be distinguished therefrom by amending the claims to indicate that the number of photographs in the series is unlimited, except by the length of the film, as distinguished from the Le Prince film, in which the number in a straight-line sequence is limited to four, whatever the length of the film.” 2

In view of these proceedings, and the acquiescence of the patentee in the limitations imposed upon the claim by the patent office, its novelty depends mainly upon the length of the film. This feature of the claim is satisfied by any film which is long enough to carry a sufficient number of successive pictures to reproduce, when properly used, some definite cycle of movements to convey the impression of reality to the observer. A film having this characteristic was not new, in the sense that its production involved invention. The Du Cos apparatus was capable of taking the requisite number of pictures in series suitable for using in an exhibiting apparatus. Prof. Morton, the expert for the complainant, in his testimony, conceded that a series of photographs of an object in motion could have been taken upon a paper strip by the camera of the certificate of addition of the Du Cos patent, and these negatives might have been transferred to a translucent paper strip, as a series of positives, and that it would have required no invention, in view of the instructions which Du Cos gives as to doing this, to prepare such a strip of paper with a series of pictures upon it. He differentiates the film of the claim from the film which could have been thus produced in the fact that the pictures, not having been taken from a single lens, would not all be taken from the same point of view. This conclusion, however, overlooks the fact that practically the images were produced from the same point of view in the Du Cos apparatus—the single aperture through which the lenses operate—and that it is quite immaterial whether the same point of view is obtained by the use of a single lens, or by the use of a number of lenses, for the purpose of meeting this characteristic of the claim. 3 4



1 We conclude that the court below erred in sustaining the validity of the claims in controversy, and that the decree should be reversed, with costs, and with instructions to the court below to dismiss the bill.

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**Petitioner's Exhibit No. 59.**

IV. Edison v. American Mutoscope & Biograph Co.

2 On Reissue Patent 12,037.

Circuit Court of Appeals, Second Circuit.

151 Fed. Rep., 767.

Before Wallace, Lacombe, and Coxe, Circuit Judges.

Lacombe, Circuit Judge (after stating the facts). Upon the appeal in the first suit we discussed the prior art and the general character of the device sought to be patented at very great length. It is unnecessary to repeat that discussion. All that was said in the prior opinion, however, may be considered as embodied herein, since the conclusion hereinafter expressed is founded upon the findings then made, and which nothing in the present record or argument induces us to qualify in any manner. We held that Edison was "not a pioneer in the large sense of the term, or in the limited sense in which he would have been if he had invented the film. He was not the inventor of the film. He was not the first inventor of apparatus capable of producing suitable negatives, taken from practically a single point of view, in single-line sequence upon a film like his, and embodying the same general means of rotating drums and shutters for bringing the sensitized surface across the lens and exposing successive portions of it in rapid succession. \* \* \* Neither was he the first inventor of apparatus capable of producing suitable negatives and embodying means for passing a sensitized surface across a single lens camera at a high rate of speed and with an intermittent motion, and for exposing successive portions of the surfaces during periods of rest." Also that "the real invention, if it involved invention as distinguished from improvement, probably consists of details of organiza-

3

4

tion, by which the capacity of the reels and moving devices are augmented and adapted to carry the film of the patent rapidly and properly.” 1

Upon the record in that cause, however, we held that the “prior art did not disclose the specific type of apparatus which is described in his patent. His apparatus is capable of using a single sensitized and flexible film of great length with a single lens camera, and of producing an indefinite number of negatives on such a film with a rapidity theretofore unknown.” The case was therefore an appropriate one for reissue under section 4916, Rev. St. U. S. [U. S. Comp. St. 1901, p. 3393], since there is no suggestion of any fraudulent or deceptive intention in claiming more than the patentee was found to be entitled to. Upon reissue with claims restricted to the specific type of apparatus described in the patent, the question would be presented whether those claims as thus restricted were properly allowed in view of the state of the art and whether defendant's device infringed them. 2

The specific type of apparatus shown in the patent was thus described in our former opinion :

“It is inclosed in a box-like casing from which light will be excluded, except through the lens, and which embraces an ordinary adjustable camera having the lens end mounted in the side of the box. Two reels, inclosed in suitable cases, are located on opposite sides of the camera lens. The film is drawn from one of the reels on to the other across the lens. It is transparent or translucent and tape-like in form, and is preferably of sufficient width to admit the taking of pictures one inch in diameter between the rows of holes on its edges. These holes are for engagement with the feed wheels for positively advancing the film. When the film is narrow, it is not essential to use two rows of perforations and two feed wheels; one of such rows and one feed wheel being sufficient. The two feed wheels are carried by a shaft and engage the film on one side of the camera opening. The power is supplied by an electric motor which drives a rotating shaft carrying the feed wheels through a pulley held in frictional engagement with the feed-wheel shaft. The take-up reel, or the reel which receives the tape after passing the lens, is also driven from the motor 3 4

- 1 shaft through a pulley which is frictionally mounted  
upon the reel shaft. The shaft carrying the feed  
wheels is controlled by a stop or escapement move-  
ment which is driven positively by another shaft, so  
that, although the motor tends to drive the feed wheels  
continuously, they are only permitted to turn with  
an intermittent motion by the stop or escapement  
device, the pulley which drives the feed wheels  
slipping on the feed wheel shaft, while that shaft  
is held at rest by the stop or escapement device.
- 2 A shutter consisting of a rotating disk having an  
opening in it is mounted directly upon the motor shaft  
and revolves past the lens, so that the light from the  
lens is intermittently thrown upon and cut off from the  
sensitive surface of the film. The camera is shown  
as a single lens, and is arranged to project the image  
of the scene being photographed upon the film when  
the openings of the shutter disk are opposite the  
aperture between the lens and the film. In operation  
the apparatus is first charged with a tape-film several  
hundred or even thousands of feet in length. The
- 3 specification states that the parts are preferably pro-  
portioned so that the film is at rest for nine-tenths  
of the time, in order to give the sensitized film as long  
an exposure as practible, and is moving forward one-  
tenth of the time, and that the forward movement is  
made to take place 30 or more times per second, and  
preferably at least as high as 46 times per second,  
although the rapidity of movement or number of times  
per second may be regulated as desired to give satis-  
factory results, and there should be at least enough so  
that the eye of the observer cannot distinguish, or
- 4 at least cannot clearly or positively distinguish at a  
glance, the difference in position occupied by the ob-  
jects in the successive pictures."

The securing of intermittent action to the parts which engage the film is effected by certain stop devices, the details of which need not be inquired into. They are equally adapted to other uses than those shown in the patent, and are the subject of a separate patent to Edison No. 491,993. The important distinctive feature is the manner in which these intermittently moving parts handle the film. In addition to the



references in the earlier case, there are a number of patents introduced here, of which it is sufficient to say that we concur with the judge who heard the cause at circuit that the apparatus described in the patent exhibits patentable novelty. Such novelty, however, cannot be predicated solely on the circumstance that the intermittently moving parts operate directly upon the film. The meritorious feature of the device is that they seize hold of the film firmly, move it positively, regularly, evenly, and very rapidly without jarring, jerking or slipping, producing a negative which can be printed from and reproduced as a whole without re-arrangement to correct imperfect spacing of the successive pictures. The specification states that when the film is clamped in the delivery case "the loose pulleys, 7, 18, slip without pulling said film along," and that, when the film is released, from that clamp, "the pulleys operate to pull the same along." Loose pulley, 18, turns the take-up reel, and it has been suggested that the phrases quoted imply that such reel is in fact the feeding mechanism. A careful study of the patent has satisfied us that this is not so. The specification explicitly states that the "teeth of the wheels, 5, enter the holes along the edges of the film for the purpose of positively advancing the film." The organization described shows that the sprocket wheels are adapted to push the film along as they revolve, as well as to hold it back when they are at rest. The distance to be moved for each exposure is so short (an inch) that the film can apparently be moved forward by pushing as well as by pulling, since the guard or guide through which it moves protects it against buckling. While the film may at times be practically tense between the intermittently moving sprocket wheels and the take-up reel, it would seem that operation at high speed would soon produce a slack or loop between the sprocket wheels and the delivery reel; and the evidence of complainant's expert shows that in practice this is so. The specification states that, when the film is narrow, it is not essential to use two rows of perforations and two feed-wheels, but at least one sprocket wheel and one row of perforations are essential to the organization described. In succession each sprocket enters a hole thereby holding the film firmly and positively and either advancing it forward or holding it at rest by a method of engagement, which eliminates all chance of slip. The engagement between the feed wheels and the film is not frictional. The film is con-

1

2

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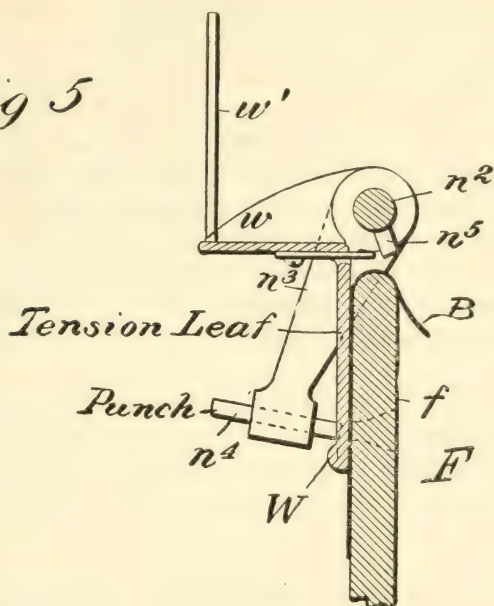
4

1 tinuously held by the interlocking of a sprocket and a hole. As one sprocket leaves a hole, the next succeeding sprocket enters the next succeeding hole. Irrespective entirely of any action of the take-up reel, the film must advance as the sprocket wheel moves, and cannot advance when the sprocket wheel is at rest. Complainant's expert has operated a camera constructed in substantial accordance with the specifications, and from which he had removed the take-up reel. He found that the sprocket wheels alone moved the intermediate section of film across the camera at the requisite high rate of speed and with the intermittent motion.

2 In the defendant's biograph camera there are the usual reels and devices for giving to some parts of the apparatus a continuous and to others an intermittent motion. The "intermediate section" of film is moved across the lens by two friction rollers located just beyond the film guide. These move continuously, and draw the film forward. The mechanism for holding the same stationary during the exposure is stipulated in the record. "Mounted upon the motor shaft, N, is a grooved cam  $n$  imparting movement to an arm,  $n^1$ , [which arm rocks a shaft,  $n^2$ ]. \* \* \* Loosely mounted upon the journal,  $n^2$  [of the rock shaft], is a tension leaf, W, forming part of the film slide [or film guide], F. The film B, passes between this tension leaf and the back plate,  $f$ , of the guide \* \* \*  $n^5$  designates a projection mounted upon the rock shaft  $n^2$ , and co-acting with the tension leaf, W, to throw the same away from the back plate and therefore out of engagement with the film when a portion of the film has been exposed and it is desired to again move the film relatively to the lens. The rolls, which draw the film, rotate constantly, and would feed the film past the lens with a continuous motion were it not that the film is gripped by the tension leaf momentarily to admit exposure."

4 Figure 5 of the drawings of defendant's biograph machine will facilitate the understanding of this description.

Fig 5



It will be observed that there is a part marked " $n^4$ ", called a "punch", which might be supposed to have, in part, the function of complainant's sprocket, holding back the film by interlocking engagement. This is not so, as will be seen when the necessity for using a punch is pointed out later on.

The engagement of defendant's moving parts with the "intermediate section" of film is wholly frictional. There is no such interlocking as will hold the film firmly, advancing it with mathematical accuracy precisely the same distance between exposures, making its motion absolutely co-extensive with that of the sprocket wheel from the beginning of the operation to the end, and thus securing a perfection of spacing of the negatives upon the exposed film. It is apparent that in defendant's engagement there is the possibility of slip"; and it might be expected that the likelihood of such action would be increased by the extremely high speed at which these machines are run, giving 20 or more exposures per second. This, moreover, is not a matter of conjecture, there is positive proof. Marvin, who has had large experience in operating defendant's machines, testified:

"Negatives to my knowledge are never exhibited in public. In order to exhibit a picture, it is necessary



1 to print positive reproductions. The apparatus in  
2 which such positive reproductions are printed can  
readily be arranged so that the pictures upon the posi-  
tive strip of film are uniformly spaced, although the  
pictures upon the negative strip may be very unevenly  
spaced. As a matter of fact, none of the cameras of  
our company produce uniformly-spaced negatives. In  
the manufacture of our mutoscope pictures the posi-  
tive pictures are printed upon bromide paper and the  
paper is cut up so that each piece of paper carries an  
independent picture.”

It is solely to facilitate this operation that the punches  
are brought into the combination. The film has no holes along  
its edges as it leaves the supply reel. They are punched in  
only at the moment of exposure. The stipulated description  
reads.

3 “Secured to the rock shaft,  $n^2$ , are two punch arms,  
 $n^3$ , at the outer ends of which are mounted punches,  
 $n^4$ . \* \* \* The film, B, is perforated in its passage  
between said tension leaf and back plate by means of  
the punches  $n^4$ . \* \* \* The film is gripped by the  
tension leaf momentarily to permit exposure. During  
this gripping interval the punch,  $n^4$ , is actuated to  
perforate the film opposite each exposed portion and at  
or adjacent to each of the film.”

The use of the perforations as an aid to correcting the  
results of imperfect spacing is shown in the testimony of  
Johnson, superintendent of defendant's photographic depart-  
ment:

4 “The feed in the biograph camera is by friction  
rollers, and the feed is tolerably regular so long as the  
film is of one thickness and so long as all the adjust-  
ments on the machine are kept in first-rate condition.  
As a matter of fact, however, the film varies very con-  
siderably in thickness, and the feed is by no means  
regular, varying from three-sixteenths to five-six-  
teenths of an inch in some cases. The normal proper  
feed is one-quarter of an inch. It would not be pos-  
sible to exhibit properly a positive facsimile of the

negative film which our company's [biograph] camera produces. 1

"Q. 21. Please explain how defendant company prepares the films and prints from these negatives which are used in the exhibiting machines?

"A. The camera is provided with a pair of punches and dies, which are brought into operation and perforate the film during the period of exposure. The perforations are situated in a blank space underneath the picture proper, and always bear a fixed relation to the picture itself, so that these holes, being fitted over dowel pins in our printing machine, enable us to print a picture which shall be perfect in register with every other picture, irrespective of the spacing in the negative film. \* \* \* The spacing of the pictures on the positive film made by our company is such that the scenes which the photographs represent will not be properly produced by simply passing the film through the biograph." 2

Because of these differences in parts, in action, and in result, we are of the opinion that the defendant's biograph camera is not the type of apparatus described and shown in the original and reissued patent. The language, even of the reissued claims, considered by itself and giving no force to the words, "substantially as set forth," may be broad enough to cover it; but that is not sufficient. "Infringement should not be determined by a mere decision that the terms of a claim of a valid patent are applicable to the defendant's device. Two things are not precisely similar because the same words are applicable to each. The question of infringement involves considerations of practical utility and of substantial identity, and therefore must be quantitative as well as qualitative." *Goodyear Shoe Mach. Co. vs. Spalding (C. C.)*, 101 Fed., 990. We conclude, therefore, that defendant's biograph camera does not infringe claims 1, 2 or 3 of the re-issue. 3 4

The other apparatus used by defendant, viz., the Warwick camera, has a different mode of operation. The engaging rollers, which advance the film after it has passed the film slide or guide where exposure is made, and which deliver it to the take-up reel, are located about half way between the take-up reel and the film slide, and their movement is so regu-

1 lated as to other parts that there will always be a loop of  
slack film between said rollers and the film slide. In conse-  
quence the film cannot be advanced by any revolution of these  
rollers, as was the case with the biograph camera. The film  
as it comes from the delivery roll has a row of holes along  
each edge. When it is in the film slide, these holes are en-  
gaged by means of a reciprocating two-tined fork, carrying  
small studs or pins which pass into the holes on the opposite  
edges of the film, in the same way as the sprockets pass into  
the holes in complainant's machine. As these studs or pins  
2 are inserted on the down stroke of the fork, and withdrawn  
on the up stroke, the film is intermittently fed across the  
field of the lens. These pins or studs do not hold back the  
film against any forward pull, because there is no forward  
pull to be resisted, neither an intentional forward pull as  
found in the biograph, nor an accidental or occasional for-  
ward pull when the film is taut between the film slide and  
take-up roll as found in the camera of the patent. When  
the pins are withdrawn, the film lies, inert, in the film slide.  
But the "intermediate section" is moved across the lens just  
by the interlocking engagement between a sprocket or pin  
3 and a hole in the film, thereby moving it positively, regularly,  
evenly, and very rapidly without jarring, jerking, or slip-  
ping; the parts being arranged so that the movement shall  
be intermittent. In our opinion the bifurcated fork with  
studs is the fair equivalent of the wheel with sprockets and  
the combination shown in the Warwick camera is an infringe-  
ment of claims 1, 2 and 3 of the reissued patent.

Claim 4 of the reissue is identical with claim 4 of the  
original and differs from claim 3 of the original only by the  
insertion of the words, "the periods of rest being greater  
than the periods of motion." It is obnoxious to the criticisms  
4 expressed as to original claim 3 in our former opinion and  
for reasons therein expressed must be held void.

The decree of the Circuit Court is reversed, without costs  
of this appeal to either party, and the cause remanded, with  
instructions to enter a decree in accordance with this opinion.



**Petitioner's Exhibit No. 60.**

1

Chicago Film Exchange,	}	No. 2400.
Appellant,		
<i>v.</i>		
Motion Picture Patents Company.	}	

## COURT OF APPEALS,

2

## DISTRICT OF COLUMBIA.

December 2, 1912.

This is an appeal from a decree on a bill by the Motion Picture Patents Co., a corporation of the State of New Jersey, against Chicago Film Exchange, a corporation of the State of Illinois, doing business in the City of Washington, for the infringement of a patent to Thomas A. Edison for a photographic film, declaring claim 2 of said patent valid, its infringement by the defendant, and granting an injunction against its further infringement, together with an order of reference to take an account of damages. The pleadings are in the usual form and were not excepted to.

3

It appears that Thomas A. Edison on August 24, 1891, applied for a patent for a photographic camera and film and received the same, No. 589,168, on August 31, 1897. Claims 1, 2, 3, 4 of this were for the camera apparatus, and claims 5 and 6 covered the films used therein. Claims 5 and 6 read as follows:

5. An unbroken transparent or translucent tape-like photographic film having thereon equidistant photographs of successive positions of an object in motion all taken from the same point of view, such photographs being arranged in a continuous straight line sequence, unlimited in number save by the length of the film, substantially as described.

4

6. An unbroken transparent or translucent tape-like photographic film provided with perforated edges and having thereon equidistant photographs of successive positions

1 of an object in motion, all taken from the same point of view, such photographs being arranged in a continuous straight line sequence, unlimited in number save by the length of the film, substantially as described.

A suit was brought by the patentee in the United States Circuit Court for the Southern District of New York, against the American Mutoscope Co. for the infringement of the said patent. From a decree sustaining the bill (110 Fed., 660), an appeal was taken to the Circuit Court of Appeals for the second circuit, where the decree was reversed, and the bill dismissed. 114 Fed., 926.

2 The Court found that Edison was not the first to devise a camera for taking negatives of objects in motion and at a rate sufficiently rapid to result in persistence of vision, but that the specific type of his apparatus was not disclosed in the prior art; that while Edison's predecessors were at work during the transition period from plates to flexible paper, and from the paper to celluloid films, they nevertheless left no new principle to be discovered, and no essentially new form of machine to be invented in order to make the latest improved photographic material available for the purpose; that Edison by perfecting the first apparatus for using this film, immediately met all the conditions necessary to commercial success; but that this did not entitle him to a monopoly of all camera apparatus for using the film. The conclusion was that while he had made an invention it was not the broad one of his apparatus claims. The fifth claim, for the film, it was said:  
3 "Is obviously an attempt by the patentee to obtain a monopoly of the product of the apparatus described in the patent so that in the event it should turn out that his apparatus was not patentable, or the product could be made by apparatus not infringing his, he could nevertheless  
4 enjoy the exclusive right of making it."

Claim 6, which differed from claim 5 only by the insertion of the words "provided with perforated edges," in describing the film, was not discussed.

Compelled to accept this decree as final by the denial of a writ of certiorari, Edison applied for a reissue, dividing his application. The re-issue patent for the apparatus having four claims was subsequently declared valid save as to claim 4. 151 Fed. 767. He also received a reissue No. 12038, after some objections and amendments, with the two following claims:

1. An unbroken transparent or translucent tape-like photographic film having thereon uniform sharply defined photographs of successive positions of an object in motion as observed from a single point of view at rapidly recurring intervals of time, such photographs being arranged in a continuous straight line sequence, unlimited in number save by the length of the film, and sufficient in number to represent the movements of the objects throughout an extended period of time, substantially as described.

2. An unbroken transparent or translucent tape-like photographic film provided with perforated edges and having thereon uniform sharply defined photographs of successive positions of an object in motion as observed from a single point of view at rapidly recurring intervals of time, such photographs being arranged in a continuous straight line sequence, unlimited in number save by the length of the film, and sufficient in number to represent the movements of the object throughout an extended period of time, substantially as described.

This patent was surrendered and a reissue applied for, on December 17, 1903, the applicant stating that the word "equidistant," had been inadvertently omitted as defining and explaining the word "uniform" used in the description of the photographic film in the claims of the first reissue. Reissued patent No. 12192 was then obtained with the claims 1 and 2 as follows:

1. An unbroken transparent or translucent tape-like photographic film having thereon uniform sharply-defined equidistant photographs of successive positions of an object in motion as observed from a single point of view at rapidly-recurring intervals of time, such photographs being arranged in a continuous straight line sequence, unlimited in number save by the length of the film, and sufficient in number to represent the movements of the object throughout an extended period of time substantially as described.

2. An unbroken transparent or translucent tape-like photographic film provided with perforated edges and having thereon uniform sharply defined equidistant photographs of successive positions of an object in motion as observed from a single point of view at rapidly recurring



- 1 intervals of time, such photographs being arranged in a continuous straight line sequence, unlimited in number save by the length of the film, and sufficient in number to represent the movements of the object throughout an extended period of time, substantially as described.

The only difference in these claims is that No. 2 contains the words "provided with perforated edges," inserted after the word film in the second line.

- Infringement of both claims was charged in this suit, but the decree was founded on Claim 2 which is the preferred one of the patent. Following the language heretofore quoted relating to the attempt made through claim 5 of the original patent (hereinabove set out), it was said by the Circuit Court of Appeals (114 Fed., 926) :

- "A claim for an article of manufacture is not invalid merely because the article is the product of a machine, whether the machine is patented or unpatented; but it is invalid unless the article is new in a patentable sense, that is, unless its original production involved invention as distinguished from ordinary mechanical skill. If it is new only in the sense that it embodies and represents superior workmanship, or is an improvement upon an old article in degree and excellence, within all authorities the claim is invalid. *Hatch v. Moffet*, 15 Fed. Rep., 252; *Worcester v. Calhoun*, 11 Blatch., 215; *Excelsior Needle Co. v. Union Needle Co.*, 32 Fed. Rep., 221; *Smith v. Nichols*, 21 Wall, 112; *Risdon Locomotive Works v. Medart*, 158 U. S., 79. \* \* \* The film was not new, and if the other characteristics of the product are not new, or are new only in the sense that they add to the article merely a superiority of finish or a greater accuracy of detail, the claim is destitute of patentable novelty."

- 4 The claims of the reissue are the result of an attempt to overcome the effect of that decision. Answering an objection in the Office that there was no necessity for the complete description of the camera apparatus, the applicant said: "We also think it desirable that the complete apparatus should be described because the differences which distinguish applicant's film from the prior films are largely due to the features of novelty in the apparatus." The following is extracted from the deposition of Thomas A. Edison taken in the case against the American Mutoscope Co. and used in evidence in this case:

“175XQ. Why do you suppose you did not refer in any of your caveats to the character or composition of material of the film which you used in any of the forms of apparatus for taking or reproducing photographs of an object in motion?” 1

A. I don't know why I did not. I was not interested in the manufacturing or making of the photographic material.

176XQ. Did you not regard the film then as a thing of your invention?

A. No, I did not regard the film as a part of my invention, no sir; I looked to the people who made it for that.

177XQ. You consider your invention to be in the apparatus which you had designed for producing the illusion of motion? 2

A. I was trying to do for the eye what the phonograph was doing for the ear, and to make it commercial.

178XQ. After you had conceived of that idea, the selection of material was not a matter of invention, although it might have been difficult?

A. Well, I don't know about that. Our experiments showed that we had to have peculiar material, especially when we were on the microphotographs, as we could not get any definition with paper and thinks like that; we had to get some glassy surface. The microphotographs shown with microscopes are very nicely defined and even a hundred figures are shown under a microscope, and all the details come out sharp, but these are taken by some means that I don't know of, but taken at very low speed, and the surface seems to be perfect, whereas the only surface we could get was very warty and irregular, and we could not bring out any details whatever when the picture was extremely small \* \* \*. 3

183Re-DQ. On cross examination you referred to the requisities of the film for your 1889 apparatus as being toughness and transparency. Did you include the requisite for the surface, the sensitive surface of such a film? 4

A. No, I did not, but that was one of the things that we got the photograph people to work on to give us the maximum sensibility, because we were very short of light, and as we were taking photographs at a very rapid rate, we had to have something extremely sensitive, and they made us a special film, different from the film that we printed on, that is to say different from the positives, and

1 this special film was made extremely sensitive so that  
the smallest amount of light would produce great results,  
and we, at first, did not get them very sensitive, but they,  
by working on them, made them extremely sensitive, so that  
with the small amount of light we had, they were quite  
satisfactory after they had experimented on them."

2 W. K. L. Dickson, who was the principal assistant of  
Edison in perfecting his apparatus, as a witness for plain-  
tiff, said that after constructing the apparatus using the  
heavy thick celluloid material of Carbutt with the toothed  
edge for feeding, he interviewed George Eastman of Roch-  
ester who was working to produce long sheets of films for  
his spool camera, and told him of the great importance  
of producing such a film. After receiving a sample of  
this new film, witness showed it to Edison, who jumped  
out of his seat and said: "We have got it. Now work  
like ——." Later, longer strips of this film were procured  
from Eastman. Owing to some imperfections in the emul-  
sion, the film did not give complete satisfaction and East-  
man labored to overcome the defects, finally succeeding.

3 Passing by the discussion relating to the reissue and  
the limitations claimed to have been placed upon the claim  
by the proceedings in the Patent Office, we come to the  
question whether Edison was the inventor in the sense of  
the patent law of the article of manufacture described in  
claim 2 of the reissue patent No. 12192: "A manufacture is  
an entity distinct from the substances of which it is  
composed, and from the instruments or art by which it is  
produced." 1 Robinson, Pat. Sec. 184. "Articles of manu-  
facture may be new in the commercial sense, when they are  
not new in the sense of the patent law. New articles of  
commerce are not patentable as new manufactures, unless  
4 it appears in a given case that the production of the new  
article involved the exercise of invention or discovery be-  
yond what was necessary to construct the apparatus for its  
manufacture or production. Nothing short of invention or  
discovery will support a patent for a manufacture any more  
than for an art, machine or composition of matter." *Collar  
Co. v. Van Dusen*, 23 Wall., 530-563. "A patentable in-  
vention is a mental result. It must be new and shown to  
be of patentable utility. Everything within the dominion  
of the conception belongs to him who conceived it. The



machine, process, or product is but its material reflex and embodiment. A new idea may be engrafted upon an old invention, be distinct from the conception which preceded it, and be an improvement. In such case it is patentable.

\* \* \* But a carrying forward, or new or more extended application of the original thought, a change only in form, proportions or degree, the substitution of equivalents, doing substantially the same thing in the same way by substantially the same means with better results, is not such invention as will sustain a patent." *Smith v. Nichols*, 21 Wall., 112-118.

Sometimes improvements in a product, owing to skill of workmanship or the perfection of machinery, consists of superiority of finish, greater accuracy of detail, and result in increased commercial value, but they do not thereby become patentable. *Smith v. Nichols*, 21 Wall., 112-119; *Risdon Locomotive Works v. Medart*, 158 U. S., 68-81; *Glue Co. v. Upton*, 97 U. S., 36. Applying those rules to the condition of this case we are of the opinion that plaintiff's assignor, Thomas A. Edison, is not the inventor of the film described in claim 2 and that his patent therefor is invalid. The flexible, transparent or translucent tape-like film prepared for taking photographs, was neither discovered nor produced by Edison. It was improved and brought into its present state of perfection by Eastman. When exhibited to Edison he seized upon it as the thing needed to make his camera apparatus a complete commercial success. He provided it with perforations along the edges at regular intervals into which the teeth of ratchet wheels of the camera entered to give it the required motion; a mechanical contrivance to adapt it to the performance of the functions of the machine. This co-operation of the rows of holes with the teeth of moving wheels he had described in a caveat of 1889 as similar to that in the Wheatstone telegraph instrument, for insuring a positive motion of the band. Moreover, perforations had been previously made in photographic films for feeding purposes. See Reynaud's French Patent. So far, our conclusion is the same substantially as that of the Circuit Court of Appeals in the decision before referred to in which claim 5 of the original patent, and, incidentally, claim 6, were under consideration.

It is further contended that the film of the present

1 patent claim has been invested with new and substantial  
qualities, by reason of the distinct, uniform, equidistant  
photographs taken of moving objects which, when the nega-  
tive strip is converted into a positive, can be passed in  
the same manner through the exhibiting machine and give  
a lifelike representation of the moving objects, never before  
obtained. In the course of their argument counsel for  
plaintiff (appellee) say: "In a word, the film produced by  
Mr. Edison and described minutely and with accuracy in  
his patent, represents a practical embodiment of all the  
2 elements necessary to complete and perfect practice of  
the motion picture art as we know it today. No detail  
seems to have escaped him; no problem growing out of the  
largest conception of the taking and exhibiting of photo-  
graphs of moving objects in a lifelike and natural manner  
seems to have baffled his solution. In saying this we do  
not mean to say that Mr. Edison, in the patent in suit,  
foreclosed all further improvements in his camera and in  
his exhibiting machine, but we do say that this record  
fully proves that he did supply all of the fundamentals  
of the film that is used in the art as practiced today."

3 We do not dissent from the proposition that Mr. Edi-  
son solved the problems of the motion picture art with  
great ingenuity and skill, but the problems that he solved  
were in the camera apparatus wherein his true claim to  
invention lies. He did not supply the "fundamentals of  
the film" that is used in the art as practiced today. The  
long, pliant, translucent, celluloid film, with the sensitized  
surface was the invention and improvement of others. The  
pictures taken on such a film are photographs. It is the  
particular character and arrangement of those pictures  
for which Mr. Edison is entitled to credit. But those  
4 pictures and their arrangement are nothing more than the  
result of the operation of his improved camera apparatus.  
The problem that was solved by their production and ar-  
rangement was a problem of the camera machinery. Ap-  
preciating this, he insisted, as we have seen, that the com-  
plete apparatus should be described "because the differences  
which distinguished applicant's film from the prior films  
are largely due to the features of novelty in the apparatus."  
Also in explaining why he had not referred in any of his  
numerous caveats to the character of the film, he said  
that he was not interested in manufacturing photographic

material, and did not regard the film as part of his invention; he looked to the people who made it for that. It seems also that while his original application was filed August 24, 1891, the claims for the film were not made until December 28, 1896, in an amendment filed that day. The conversion of this negative film strip into a positive for use in an exhibiting apparatus was effected by one of the familiar processes of the photographic art.

The invention of Edison was exhausted in the construction of the camera which enabled the photographs of moving objects to be taken upon the Eastman film in the distinct, uniform and satisfactory manner justly claimed for them. The pictures are the direct result of the mechanism of the camera with the Eastman film mechanically adapted to, and applied therein.

In our opinion, Claim 2 of reissue patent No. 12,192 is unpatentable and void; and the decree must be reversed with costs, and the cause remanded with direction to dismiss the bill.

Reversed.

Seth Shepard,  
Chief Justice.

(Endorsed:) No. 2400. Chicago Film Exchange, Appellant, *v.* Motion Picture Patents Company. Opinion of the Court per Mr. Chief Justice Shepard. Court of Appeals, District of Columbia. Filed Dec. 2, 1912. Henry W. Hodges, Clerk.

A true copy

Attest:

[SEAL.]

Henry W. Hodges,  
Clerk of the Court of Appeals  
of the District of Columbia.

By Mr. GROSVENOR:

Q. Mr. Marvin, referring to the Pross patent. How many years has the Biograph Company owned the Pross patent? A. From the time of its issue down to the time of its assignment to the Motion Picture Patents Company.



1 I do not recall the date of the issue of that patent, but I think it was in 1902 or 1904.

Q. I have the statement here that was issued March the 10th, 1903. You owned it from about that time until December 18, 1908, when the Patents Company was formed?

A. Yes.

Q. Was not the first suit you ever brought on that patent in the Spring of 1908, after you had refused to join in with the Edison licensees? A. I think that is true. I think there were no infringements of that patent until about the year 1907.

2 Q. Then who began to infringe that patent in 1907? A. I think the Nicholas Power Company and the Edison Company.

Q. Did you have any direct knowledge of the Edison Company infringing that patent? A. The observation of the machines sold by them.

Q. In the years 1907 and 1908? A. I can't speak positively about the year 1907.

3 Q. In any event you began no suit, whatever the reason, until after you had refused to join in with the Edison licensees, is that correct? A. Well, the Biograph Company didn't bring any suit under that patent, but the Motion Picture Patents Company—well, hold on, I am wrong about that. Yes, I think the Biograph Company did bring suit under that patent after it refused to take a license from the Edison Company, and I think that was the first suit that was brought under the patent.

Q. You brought a suit against one or two theatres, did you not? William Fox, for instance? A. Yes.

4 Q. And the Lyric Theatre. Those were theatres that were using the Edison film and the film of the Edison licensees? A. I don't know about that.

Q. Has there ever been any decision of the courts since 1903, upholding the Pross patent? A. No.

Q. You brought suit after the Motion Picture Patents Company was formed under that patent? A. I believe so.

Q. Have you prosecuted any of them? A. There are some now going forward.

Q. Mr. Marvin, you said yesterday, that there were about 150 exchanges about the time the Patents Company was formed and I notice in your answer you state,

on page 36, one hundred and twenty; which is correct? I am asking you because I want to have it as near the true figure as you can get it? A. I think perhaps, in my figure of 120, I had in mind the number of licensed exchanges, and in mentioning the number 150, I had in mind the total number of exchanges. 1

Q. Then, 150 would be more nearly accurate as giving the number of all the exchanges in the United States in December, 1908? A. I think so, if you include infringing exchanges.

Q. At page 47 of your answer mentioning the licenses you gave, you say that you gave them to all individuals and corporations then engaged in the business of distributing motion picture films, upon being satisfied that they were responsible, and were persons who could reasonably be expected to conduct the business on lines that would not prove detrimental to the growth of the motion picture art. Who was it that determined or passed upon this question of the responsibility of the film exchange? A. The Directors of the Motion Picture Patents Company. 2

Q. And you at that time issued licenses to those of the film exchanges whom you considered were the responsible persons and firms engaged in the film rental business? A. If they applied for this license. 3

Q. Then the one hundred and sixteen licenses which you issued, I think that was the number shown on the exhibit yesterday—those 116 licenses were issued to those whom you considered responsible film rental exchanges? A. Well, they were issued to those whom we considered might be responsible film exchanges. We reserved the right of cancellation, so that if we should find that they were not responsible or desirable exchanges later on we could terminate the licenses. 4

Q. You reserved the power to terminate the license or the contract on fourteen days' notice without cause, did you not? A. We did.

Q. And to terminate it instantly for breach of any of the terms of the license? A. Yes.

Q. And you considered such acts as the following violations of the license, namely: Distributing films to exhibitors that were not licensed? A. Yes.

Q. Or handling films on the part of rental exchanges

1 which were not manufactured by one of the licensed manufacturers? A. Yes, handling infringing films.

Q. And by infringing films you mean films manufactured by others than the licensed manufacturers? A. I mean the films that embodied inventions covered by our patents made by people who were not licensed under the patent.

2 Q. And by that term you mean all film used on moving picture machines or projecting machines manufactured by any other than licensed manufacturers and importers? A. All such film manufactured by all people who were not licensed under the patents.

Q. In your answer, beginning at page 53, you proceed to enumerate, beginning with folio 164, and thereafter, certain methods of doing business by the rental exchanges which were deemed unsatisfactory by the Patents Company:

“(a) Rental exchanges were financially irresponsible.”

3 Do you mean to state that these rental exchanges whom you selected as being, as you have testified, the responsible exchanges—do you mean to say that that is a true statement in your answer—“Rental exchanges were financially irresponsible?” A. Yes, in some cases we found that exchanges which we had supposed were responsible, were not financially responsible, and that we had been mistaken in our estimate of them.

4 Q. Well, you have used there a pretty general statement. You say, “Rental exchanges were financially irresponsible.” Do you mean all rental exchanges or some rental exchanges? A. At what time does this refer to—if they were licensed before—

Q. (Interrupting): It says, “During the period of organization of this respondent” (respondent Patents Company), “and prior to the organization of the General Film Company, hereinafter referred to?” A. Yes.

Q. I have not examined you about the General Film Company. This relates to the period after the formation of the Patents Company, December 18, 1908, down to April, 1910? A. Yes.



Q. And "During the period of organization of this respondent and prior to the organization of the General Film Company, the rental agencies had conducted their business in a manner utterly unsatisfactory not only to the manufacturers and importers of the films, but also to their own customers, the exhibitors, and theatre owners, that is to say: (a) rental exchanges were financially irresponsible." Do you mean to say that these 116 odd rental exchanges were all financially irresponsible? A. No, I don't think all of them were financially irresponsible, but I think some of them were financially irresponsible.

Q. You would modify that allegation of the answer and say that some rental exchanges were irresponsible? A. I think it would be more accurate to so modify it.

Q. What per cent. of those 116 were irresponsible? A. I could not say that offhand.

Q. In April, 1910, the nine licensed manufacturers organized the General Film Company, did they not? A. Yes.

Q. That company thereupon engaged in the rental exchange business, did it not? A. Yes.

Q. And thereafter it acquired the business of a large number of these 116 rental exchanges, it bought their property, their place of business and took on the business they were doing? A. I believe they bought the property from about fifty-seven of them.

Q. And of the other exchanges going to make the 116 the Patents Company cancelled a large number, either under the 14 days clause which you have referred to, or under the clause permitting immediate cancellation for violation, is that correct? A. According to my recollection 30 of those original licenses had been cancelled prior to the organization of the General Film Company.

Q. Out of the 116 rental exchanges, you say that the General Film Company bought 57? A. Yes, that is my recollection.

Q. Of the others how many had their licenses cancelled by the Patents Company? A. Up to what time?

Q. Well, up to, say, January 1, 1912, from December 18, 1908, to January 1, 1912? A. I think forty-two of them had been cancelled up to that time. Some of them had voluntarily gone out of business before that time, and some of them had combined with others.

- 1 Q. Did these nine licensed manufacturers all take stock in the General Film Company? A. I think they did. I have no general knowledge on that point.

Thereupon, at 12:30 o'clock P. M., on this January the 16th, 1913, the hearing was adjourned until 2:30 o'clock P. M., January 16, 1913.

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New York City, January 16, 1913.

- 2 The hearing was resumed pursuant to adjournment at 2:30 o'clock P. M.

Appearances the same as at the morning session.

Thereupon HARRY N. MARVIN resumed the stand for further examination.

Direct examination (continued):

- 3 Mr. GROSVENOR: I offer in evidence at this time a statement produced by counsel for the defendants at the request of counsel for the Government, showing the exchanges whose licenses had been cancelled or terminated by the Motion Picture Patents Company up to January, 1912, and giving the dates of such cancellation or termination. I will ask to have that copied in the record.

Marked Petitioner's Exhibit No. 61, and is as follows:

4 **Petitioner's Exhibit No. 61.**

EXCHANGES WHOSE LICENSES HAVE BEEN CANCELLED OR TERMINATED BY THE MOTION PICTURE PATENTS COMPANY.

Name of Exchange	Address	Date cancelled or terminated
Philadelphia Film Exchange,	Philadelphia, Pa.,	Feb. 27, 1909.

- Wm. H. Swanson, Co., Chicago, Ill., Feb. 27, 1909. 1  
 Wm. H. Swanson Co., Omaha, Nebr., Feb. 27, 1909.  
 Wm. H. Swanson, St. Louis Co., St. Louis, Mo., Feb.  
 27, 1909.  
 American Film Ex., Pittsburg, Pa., Apr. 15, 1909.  
 20th Century Opt. Co., Kansas City, Mo., Mar. 20, 1909.  
 20th Century Opt. Co., Chicago, Ill., Mar. 20, 1909.  
 Harry Davis, Buffalo, N. Y., Apr. 15, 1909.  
 Harry Davis, Philadelphia, Pa., Apr. 15, 1909.  
 Harry Davis, Pittsburg, Pa., Apr. 15, 1909.  
 Schiller Film Ex., Chicago, Ill., May 13, 1909.  
 American Film Ex. Memphis, Tenn., May 13, 1909. 2  
 Star Film Exchange, Chicago, Ill., May 13, 1909.  
 U. S. Film Exchange, Chicago, Ill., May 13, 1909.  
 Michigan Film & Supply Co., Detroit, Mich., Jun. 10,  
 1909.  
 Talking Machine Co., Rochester, N. Y., July 1, 1909.  
 Southern Film Ex., Cincinnati, O., Aug. 5, 1909.  
 Superior Film Sup. Co., Toledo, Ohio, Aug. 5, 1909.  
 Southern Talking Machine Co., Dallas, Tex., Oct. 14,  
 1909.  
 S. Nye Bass, New Orleans, La., Feb. 7, 1910. 3  
 Theatre Film Service Co., San Francisco, Cal., Feb. 7,  
 1910.  
 Imperial Film Ex., New York, N. Y., Apr. 14, 1910.  
 Imperial Film Ex., Troy, N. Y., Apr. 14, 1910.  
 Imperial Film Ex., Washington, D. C., Apr. 14, 1910.  
 Miles Bros., Baltimore, Md., Apr. 14, 1910.  
 World Film Exchange, Harrisburg, Pa., Feb. 8, 1910.  
 Mullin Film Service, Watertown, N. Y., Feb. 1, 1909.  
 Pacific Coast F. Co., San Francisco, Cal., Feb. 1, 1909.  
 Eugene Cline & Co., Chicago, Ill., Mar. 20, 1909.  
 Eugene Cline, Salt Lake City, Utah, Mar. 20, 1909. 4  
 Miles Bros., Boston, Mass., Apr. 22, 1910.  
 Miles Bros., New York, N. Y., Apr. 22, 1910.  
 Miles Bros., San Francisco, Cal., Jun. 22, 1910.  
 Kay-Tee Film Ex., Los Angeles, Cal., July 19, 1910.  
 O. T. Crawford Film Exchange Co., St. Louis, Mo., July  
 19, 1910.  
 Western Film Ex., St. Louis, Mo., July 19, 1910.  
 Colorado Film Ex., Denver, Colo., Sept. 13, 1910.



- 1 H. & H. Film Service, Chicago, Ill., Oct. 11, 1910.  
 Western Film Ex., Joplin, Mo., Nov. 10, 1910.  
 Western Film Ex., Milwaukee, Wis., Nov. 10, 1910.  
 Swaab Film Service, Philadelphia, Pa., Dec. 19, 1910.  
 Lake Shore Film & Supply Co., Cleveland, O., Feb. 15, 1911.

- 2 Mr. GROSVENOR: I also offer in evidence a statement showing the prices and dates of delivery of exchange equipment and stock of motion pictures and merchandise bought by the General Film Company, said statement having been prepared and produced by counsel for the defendants at the request of counsel for the Government.

Marked Petitioner's Exhibit No. 62, and is as follows:

### **Petitioner's Exhibit No. 62.**

- 3 STATEMENT SHOWING PRICE AND DATES OF DELIVERY OF EXCHANGE EQUIPMENT AND STOCK OF MOTION PICTURES AND MERCHANDISE BOUGHT BY GENERAL FILM COMPANY.

- |   |  |             |
|---|--|-------------|
| 4 | Actograph Company, 107 East<br>17th Street, New York, N. Y.;<br>69 North Pearl Street, Albany,<br>N. Y.            |             |
|   | June 27, 1910.   |             |
|   | Price,   | \$93,252.18 |
|   | Cash,  | \$68,252.18 |
|   | 7% preferred stock,  | 25,000.00   |
|   | Amalgamated Film Exchange,<br>142½ Fourth Street, Portland,<br>Oregon; 221 Madison Street,<br>Seattle, Washington. |             |
|   | September 6, 1910.   |             |
|   | Price,   | 115,044.35  |

Cash,	80,044.35	1
7% preferred stock,	35,000.00	
American Film Service, 77 South Clark Street, Chicago, Ill. September 6, 1910.		
Price,		52,179.59
Cash,	38,679.59	
7% preferred stock,	13,500.00	
American Vitagraph Company, 116 Nassau Street, New York, N. Y. August 15, 1910.		2
Price,		52,205.40
Cash,	39,205.40	
7% preferred stock,	13,000.00	
Birmingham Film Supply Com- pany, 2008½ Third Avenue, Birmingham, Alabama. September 19, 1910.		
Price,		14,907.96
Cash,	10,907.96	
7% preferred stock,	4,000.00	
Buffalo Film Exchange, 272 Washington Street, Buffalo, N. Y. July 5, 1910.		3
Price,		25,151.66
Cash,	19,151.66	
7% preferred stock,	6,000.00	
Charles A. Cahuff, 4th & Green Streets, Philadelphia, Pa. June 27, 1910.		
Price,		70,482.29
Cash,	50,482.29	4
7% preferred stock,	20,000.00	
James B. Clark and Richard A. Rowland, 121 Fourth Avenue, Pittsburg, Pa. October 31, 1910.		
Price,		62,176.82
Cash,	44,176.82	
7% preferred stock,	18,000.00	

1	William Henry Clune, 727 South Main Street, Los Angeles, Cal.		
	March 27, 1911.		
	Price,		68,964.40
	Cash,	48,964.40	
2	7% preferred stock,		
	The Denver Film Exchange Corporation, 713 Lincoln Street, Denver, Colo.		
	August 29, 1910.		
	Price,		33,923.54
3	Cash,		
	7% preferred stock,		
	Duquesne Amusement Supply Company, 436 Fourth Avenue, Pittsburg, Pa.		
	October 31, 1910.		
4	Price,		
	Cash,		
	7% preferred stock,		
	Electric Theatre Supply Co., Inc., 44 North Tenth Street, Philadelphia, Pa.		
5	June 27, 1910.		
	Price,		55,685.08
	Cash,	39,685.08	
	7% preferred stock,	16,000.00	
6	Ernest Albert Fenton, Montreal, Quebec; St. John, New Brunswick; Toronto, Ontario; Winnipeg, Manitoba; Vancouver, British Columbia.		
	December 12, 1910.		
	Price,		119,928.91
	Cash,	83,128.91	
7	7% preferred stock,		
	Florence Film Company, 18 East Third South, Salt Lake City, Utah.		
	October 10, 1910.		
	Price,		30,054.93
8	Cash,		
	7% preferred stock,		



Howard Moving Picture Company, 564 Washington Street, Boston, Mass. June 13, 1910.			1
Price,		132,746.42	
Cash,	100,746.42		
7% preferred stock,	32,000.00		
Imported Film & Supply Co., Limited, 840 Union Street, New Orleans, La. December 12, 1910.			
Price,		50,033.53	2
Cash,	50,033.53		
7% preferred stock,	.....		
The Kent Film Service Company, Nicholas Building, Toledo, Ohio. January 3, 1911.			
Price,		31,980.81	
Cash,	23,980.81		
7% preferred stock,	8,000.00		
George Kleine, 657 Washington Street, Boston, Mass. June 13, 1910.			3
Price,		79,910.65	
Cash,	59,110.65		
7% preferred stock,	20,800.00		
George Kleine, St. John, New Brunswick; Montreal, Quebec; Toronto, Ontario; Winnipeg, Manitoba; Vancouver, British Columbia. December 12, 1910.			
Price,		110,700.00	
Cash,	73,900.00		4
7% preferred stock,	36,800.00		
George Kleine, 52 State Street, Chicago, Ill. June 6, 1910.			
Price,		56,129.43	
Cash,	40,729.43		
7% preferred stock,	15,400.00		

1	George Kleine, Nassau Building, Denver, Colorado. August 29, 1910.		
	Price,		24,244.25
	Cash,	17,844.25	
	7% preferred stock,	6,400.00	
2	George Kleine, 19 East 21st Street, New York, N. Y. June 6, 1910.		
	Price,		53,581.82
	Cash,	39,381.82	
	7% preferred stock,	14,200.00	
3	The H. Lieber Company, 24 West Washington Street, Indianap- olis, Indiana, August 21, 1911.		
	Price,		70,329.32
	Cash,	55,329.32	
	7% preferred stock,	15,000.00	
4	Siegmund Lubin, 21 South 8th Street, Philadelphia, Pa. June 6, 1910.		
	Price,		67,335.68
	Cash,	48,935.68	
	7% preferred stock,	18,400.00	
5	The Magnetic Film Service Com- pany, 123 Shillito Place, Cin- cinnati, Ohio. December 5, 1910.		
	Price,		32,339.81
	Cash,	24,339.81	
	7% preferred stock,	8,000.00	
6	Jacob Willis Melchior, 40 South 3rd Street, Columbus, Ohio. December 5, 1910.		
	Price,		52,503.96
	Cash,	37,503.96	
	7% preferred stock,	15,000.00	

Louie Mitchell, 120½ West Markham Street, Little Rock, Ark., 83 South Main Street, Memphis, Tennessee. August 29, 1910.			1
Price,		53,915.89	
Cash,	33,915.89		
7% preferred stock,	20,000.00		
Monarch Film Exchange Company, Oklahoma City, Oklahoma. October 3, 1910.			2
Price,		39,658.52	
Cash,	29,658.52		
7% preferred stock,	10,000.00		
The Montana Film Exchange Co., Broadway & Main Streets, Butte, Montana. June 26, 1911.			
Price,		31,183.15	
Cash,	21,683.15		
7% preferred stock,	9,500.00		
Fayette T. Moore, 434 Ninth Street, N. W., Washington, D. C. December 27, 1910.			3
Price,		36,237.99	
Cash,	32,037.99		
7% preferred stock,	4,200.00		
Motion Picture Supply Company, Cox Building, Rochester, N. Y. July 5, 1910.			
Price,		19,932.31	
Cash,	14,932.31		4
7% preferred stock,	5,000.00		
Moving Picture Service Company of Syracuse, Central Building, Rochester, N. Y. July 5, 1910.			
Price,		21,000.00	
Cash,	15,000.00		
7% preferred stock,	6,000.00		



1	The National-Vaudette Film Company, 69-71 Griswold Street, Detroit, Michigan.	
	November 21, 1910.	
	Price,	64,750.90
	Cash,	44,750.90
2	7% preferred stock,	20,000.00
	Adolph Roth, Helen G. Jacobs, and Abraham C. Springer, 420 Turk Street, San Francisco, Cal.	
	May 29, 1911.	
	Price,	86,978.91
3	Cash,	63,978.91
	7% preferred stock,	23,000.00
	Pearce & Scheck, Incorporated, 415 East Baltimore Street, Baltimore, Md.	
	October 3, 1910.	
4	Price,	22,007.43
	Cash,	17,007.43
	7% preferred stock,	5,000.00
	Peoples Film Exchange, 260 West 42nd Street, New York, N. Y.	
5	April 10, 1911.	
	Price,	56,236.81
	Cash,	42,236.81
	7% preferred stock,	14,000.00
6	Pittsburg Calcium Light & Film Company, Central Building, Rochester, N. Y.	
	July 5, 1910.	
	Price,	23,694.63
	Cash,	17,694.63
7	7% preferred stock,	6,000.00
	Pittsburg Calcium Light & Film Company, 119 Fourth Avenue, Pittsburg, Pa.; 108 South Main Street, Wilkesbarre, Pa.; 132 East 4th Street, Cincinnati, Ohio; 421 Walnut Street, Des Moines, Iowa; 1212 Farnum Street, Omaha, Nebraska.	

October 31, 1910.			1
Price,		249,993.53	
Cash,	181,993.53		
7% preferred stock,	68,000.00		
Progressive Motion Picture Com- pany, Eccles Building, Ogden, Utah.			
October 10, 1910.			
Price,		19,756.96	
Cash,	14,756.96		
7% preferred stock,	5,000.00		
The Spokane Film Exchange Co., 120 Wall Street, Spokane, Washington.			2
June 26, 1911.			
Price,		14,493.22	
Cash,	9,993.22		
7% preferred stock,	4,500.00		
Geo. K. Spoor Co., 435 North Clark Street, Chicago, Ill.			
October 31, 1910.			
Price,		45,971.95	
Cash,	33,671.95		3
7% preferred stock,	12,300.00		
Thomas L. Tally, 833 South Broadway, Los Angeles, Cal.			
March 6, 1911.			
Price,		47,193.33	
Cash,	33,193.33		
7% preferred stock,	14,000.00		
Theater Film Service Co., 85 Dearborn Street, Chicago, Ill.			
June 27, 1910.			
Price,		67,006.19	4
Cash,	48,906.19		
7% preferred stock,	18,100.00		
Theatre Film Supply Company, 2104 First Avenue, Birming- ham, Alabama.			
September 6, 1910.			
Price,		19,887.02	
Cash,	13,887.02		
7% preferred stock,	6,000.00		

1	Turner & Dahnken, 138 Eddy Street, San Francisco, Cal. September 4, 1911.		
	Price,		107,393.19
	Cash,	82,393.19	
	7% preferred stock,	25,000.00	
2	The United Film Exchange Company, 414 Superior Avenue, N. W., Cleveland, Ohio. September 12, 1910.		
	Price,		26,212.47
	Cash,	20,212.47	
	7% preferred stock,	6,000.00	
3	Charles E. Van Duzee, 709 Hennepin Ave., Minneapolis, Minn. November 20, 1911.		
	Price,		50,274.44
	Cash,	40,274.44	
	7% preferred stock,	10,000.00	
4	Percival L. Waters, 41 East 21st Street, New York, N. Y. October 3, 1910.		
	Price,		80,565.42
	Cash,	59,665.42	
	7% preferred stock,	20,900.00	
5	Alfred Weiss Film Exchange, 219 Sixth Avenue, New York, N. Y. July 5, 1910.		
	Price,		33,281.13
	Cash,	23,281.13	
	7% preferred stock,	10,000.00	
6	J. D. Wheelan Film Company, 1807 Main Street, Dallas, Texas. August 7, 1911.		
	Price,		62,699.90
	Cash,	47,599.90	
	7% preferred stock,	15,100.00	
7	Yale Film Exchange Company, 7th & Main Streets, Kansas City, Mo. October 3, 1910.		
	Price,		106,024.82
	Cash,	86,024.82	
	7% preferred stock,	20,000.00	



S. Nye Bass Film Exchange, 823			1
Union Street, New Orleans, La.			
November 21, 1910.			
Price,		8,935.21	
Cash,	8,935.21		
7% preferred stock,	.....		
Calumet Film Exchange, 1609			
Masonic Temple, Chicago, Ill.			
July 25, 1910.			
Price,		30,000.00	
Cash,	20,000.00		
7% preferred stock,	10,000.00		2

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Mr. GROSVENOR: I also offer in evidence a statement giving a list of the branches of the General Film Company on Jan. 1, 1912, with the addresses of said branches, said statement having been prepared and produced by counsel for the defendants at the request of Government counsel.

Marked Petitioner's Exhibit No. 63, and is as follows: 3

### **Petitioner's Exhibit No. 63.**

#### **LIST OF BRANCHES OF GENERAL FILM COMPANY.**

Jan. 12, 1912.

General Film Company, Albany, N. Y., 69 N. Pearl Street.			
" " "	Atlanta, Ga., 314 Rhodes Bldg.		
" " "	Boston, Mass., 564 Washington St.		4
" " "	Boston, Mass., 657 Washington St.		
" " "	Buffalo, N. Y., 272 Washington St.		
" " "	Butte, Mont., B'way & Main St.		
" " "	Chicago, Ill., 435 N. Clark Street.		
" " "	Chicago, Ill., 117 N. Dearborn St.		
" " "	Chicago, Ill., 19 S. Wabash Ave.		
" " "	Chicago, Ill., 429 S. Wabash Ave.		
" " "	Cincinnati, Ohio, 7th & Walnut Sts.		
" " "	Cleveland, Ohio, 414 Superior Ave.		

1	General Film Company,	Columbus, Ohio,	40 South Third St.
	"	"	Dallas, Texas, 1807 Main Street.
	"	"	Denver, Colo., 16th & Larimer Sts.
	"	"	Detroit, Mich., 71 Griswold Street.
	"	"	Indianapolis, Ind., 24 W. Wash. St.
	"	"	Kansas City, Mo., 622 Main St.
	"	"	Los Angeles, Cal., 727 S. Main St.
	"	"	Memphis, Tenn., 341 S. Main St.
	"	"	Minneapolis, Minn., 709 Hennepin Avenue.
2	"	"	New Orleans, La., 840 Union St.
	"	"	New York, N. Y., 219 Sixth Ave.
	"	"	New York, N. Y., 107 E. 17th St.
	"	"	New York, N. Y., 19 E. 21st St.
	"	"	New York, N. Y., 41 E. 21st St.
	"	"	New York N. Y., 260 W. 42nd St.
	"	"	Oklahoma City, Okla., 211 W. Second Street.
	"	"	Omaha, Nebr., 1212 Farnam St.
	"	"	Philadelphia, Pa., 926 Market St.
	"	"	Philadelphia, Pa., 44 North 10th St.
3	"	"	Pittsburg, Pa., 119 Fourth Ave.
	"	"	Pittsburg, Pa., 436 Fourth Ave.
	"	"	Portland, Ore., 68 Seventh St.
	"	"	Rochester, N. Y., 158 E. Main St.
	"	"	St. Louis, Mo., 604 Chestnut St.
	"	"	Salt Lake City, Utah, 260 Floral Ave.
	"	"	San Francisco, Cal., 138 Eddy St.
	"	"	Seattle, Wash., 819 Third Ave.
	"	"	Spokane, Wash., 120 Wall St.
	"	"	Washington, D. C., 7th & E. Sts., N. W.
4	"	"	Wilkes-Barre, Pa., 47 S. Penn. Ave.

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MR. GROSVENOR: I offer the by-laws of the General Film Company, produced by counsel for the defendants, and read into the record the following:

(The by-laws of the General Film Company are marked Petitioner's Exhibit No. 64, and the specified sections thereof are as follows:)

**Petitioner's Exhibit No. 64.**

1

**ARTICLE IV. PAR. 3.**

Holders of the preferred stock shall not be entitled to vote such stock at meetings of the stockholders of the Company.

**ARTICLE IV. PAR. 6.**

Common stock shall not be issued at less than par, and it shall be issued for money only.

2

**ARTICLE IV. PAR. 9.**

All Treasury common stock that the Board of Directors from time to time decides to issue, shall be allotted pro rata to the holders of issued common stock, at such price, not less than par, as the Board of Directors decides that the stock is worth.

**ARTICLE IV. PAR. 10.**

3

The Secretary of the Company shall mail to each holder of issued common stock at the address of the stockholder recorded in the stock-books of the Company, a notice in writing setting forth the total number of shares of Treasury common stock that the Board of Directors decides to issue, the number of shares allotted to the stockholder, and the price fixed by the Board of Directors for such stock.

**ARTICLE V. SECTION 6.**

Only stockholders of record holding common stock of the Company shall be entitled to vote at annual and special meetings of stockholders, and each stockholder shall be entitled to one vote for each share of common stock standing in the stockholder's name.

4

At all elections for directors, cumulative voting shall be permitted, and each stockholder of record shall have the right to cast as many votes as the product of the number of shares of common stock recorded in the stockholder's name multiplied by the number of directors to be elected, and



- 1 each holder of common stock may cast all such votes for one  
candidate or distribute them in favor of two or more can-  
didates.

## ARTICLE VI.

### Directors.

#### Section 1.—Number and Duties:

- 2 A Board composed of ten (10) directors shall have charge  
of the property and interests of the Company, and shall  
direct and conduct its business.

#### Section 2.—Qualifications:

No person shall be qualified to serve as a director of the  
Company unless at the time of his election, he is a holder  
of record of at least one share of its preferred or common  
stock.

#### Section 3.—Vacancies:

- 3 The Board of Directors may, by the affirmative vote of  
not less than seven (7) of the directors, accept the resigna-  
tions of individual directors, and may, by the affirmative  
vote of not less than seven (7) of the directors, fill vacan-  
cies that occur in the Board of Directors by resignation,  
disqualification, death or the refusal of any person to serve  
as director after being elected.

- 4 If a candidate to fill a vacancy in the Board, should be  
nominated by the holder of record of common stock, who  
nominated the director whose resignation, disqualification,  
death or refusal to serve, caused the vacancy in the Board,  
the directors shall fill the vacancy by electing the candidate  
so nominated.

#### Section 4.—Regular Meetings:

Regular meetings of the Board of Directors shall be held  
at the office of the Company, in the City of New York, New  
York, on the second Tuesday of each month, except when  
such Tuesday is a legal holiday; in which event, the meet-  
ing shall be held on the following Thursday.

#### Section 5.—Special Meetings:

Special Meetings of the Board of Directors may be held

at any time and place upon a notice in writing signed by the Clerk of the Company, or by the Secretary, or by the President, or by three of the directors of the Company. Special meetings of the Board of Directors may also be held at any time and place without notice in writing, when all the directors of the Company consent in writing to waive such written notice.

#### Section 6.—Notice of Meetings:

With the exception of special meetings of the Board of Directors for which all the directors consent in writing to waive written notice, a written or printed notice of every regular and special meeting of the Board of Directors of the Company, stating the time and place at which the meeting will be held, shall be prepared and mailed by the Clerk of the Company, or by the Secretary, or by the President, or by three of the directors of the Company, postage prepaid, to the last known post-office address of each director, not less than five (5) days before the date of every regular or special meeting of the directors.

Written or printed notice of special meetings of the Board of Directors shall state the business to be transacted, and no other business shall be transacted at such meetings.

#### Section 7.—Quorum:

Seven (7) or more directors shall constitute a quorum at every meeting of the Board of Directors, and the vote of not less than seven (7) directors shall decide the action of the Board. When a quorum is not present, at any regular or special meeting, the directors who are present, shall not transact any business but may adjourn until a quorum is obtained.

#### Section 8.—Election of Officers:

At the first meeting of the Board of Directors after each election of directors by the stockholders, a President, Vice-President, Treasurer, Clerk and Secretary shall be elected by the directors to serve until the next annual meeting of the stockholders or until the election and acceptance of office by their respective successors, unless removed from office, in the meantime, by the Board of Directors. The election of Officers shall be by ballot and the candidate for

- 1 each office who receives not less than seven (7) votes, shall be declared elected.

Section 9.—Executive Committee:

During the time intervening between meetings of the Board of Directors, the business of the Company shall be directed by an Executive Committee.

- 2 The Executive Committee shall consist of the President of the Company, who shall be Chairman, and two directors who shall be elected members of the Executive Committee in the same manner in which the officers of the Company are elected.

The Executive Committee shall exercise all the powers of the Board of Directors while the Board is not in session; shall keep minutes of the business transacted at all its meetings, and shall report to the Board of Directors at each meeting of the Board, all the business that it transacted since the last meeting of the Board.

The Executive Committee shall be governed by the directions of the Board of Directors in transacting all business to which directions of the Board relate.

- 3 Section 10.—Removal of Officers of the Company and Members of the Executive Committee:

The Board of Directors shall have the right to remove from office, any officer of the Company or member of the Executive Committee, by the affirmative votes of not less than seven (7) directors of the Company.

Section 11.—Compensation of Directors:

- 4 Each director shall receive the sum of twenty (20) dollars as compensation for his attendance at each regular and special meeting of the Board of Directors, and shall receive in addition, an allowance of six (6) cents for every mile that he is required to travel, to attend each meeting, from and to the city in which he resides.

Section 12.—Compensation of Officers of the Company and Members of the Executive Committee:

The Board of Directors may vote such salaries to the different officers of the Company and members of the Executive Committee, as it deems proper, but a salary shall not



be voted to any officer who is also a director, at any meeting of the Board at which his presence is necessary for a quorum. 1

## ARTICLE VII.

### Officers.

#### Section 1.—Election and Qualifications:

The officers of the Company shall be a President, Vice President, Treasurer, Clerk and Secretary. Only directors of the Company shall be eligible for election to the offices of President, Vice President and Treasurer. 2

#### Section 2.—The President:

The President when present, shall preside at all meetings of the stockholders, the Board of Directors and the Executive Committee; shall sign, with the Treasurer, all certificates of stock, shall countersign all cheques, and when duly authorized by the Board of Directors, shall sign all contracts, deeds, notes, liens and other instruments in writing. He shall also sign with the Secretary, the minutes of all meetings of the Board of Directors over which he has presided. The President shall also submit to the stockholders at each annual meeting, a complete report of the business of the Company during the year ending on the 31st day of December preceding the annual meeting. 3

#### Section 3.—The Vice President.

The Vice President shall keep himself fully acquainted with the business and affairs of the Company, and in the absence or disability of the President, he shall possess all the powers and shall perform all the duties of that officer.

#### Section 4.—The Treasurer: 4

The Treasurer shall have custody of and shall be responsible for all the monies and securities of the Company shall keep at the office of the Company in the City of New York, in books belonging to the Company, full and accurate records and accounts showing the transactions of the Company; shall make only such expenditures as are authorized by the Board of Directors either directly or through the Executive Committee, and shall submit receipts and vouchers for such expenditures. He shall deposit all monies that he receives for

- 1 the Company, in the name of the Company in such depository or depositories as are approved by the Board of Directors. His books and accounts shall be open during business hours to the inspection of any director of the Company. The Treasurer shall also endorse for collection or deposit, all cheques, notes, bills and negotiable paper; shall make such payments as are necessary in conducting the business of the Company after obtaining general or special authorization of the Board of Directors either directly or through the Executive Committee, and shall sign, with the President, all certificates of stock and cheques for the withdrawal of money
- 2 from depositories.

He shall prepare and submit to the stockholders at each annual meeting, a full report showing the financial condition of the Company, and he shall prepare and submit to the Board of Directors and Executive Committee, from time to time, such reports and statements as they request him to supply. He shall protect the Company by a bond in the sum of ten thousand (10,000) dollars, with sureties acceptable to the Board of Directors, for the faithful performance of his duties, in conformity with the requirements of these By-laws.

- 3 In the absence or disability of both the President and Vice President, the Treasurer shall have all the powers and perform all the duties of the President.

#### Section 5.—The Clerk.

- The Clerk shall maintain a resident clerk's office in the State of Maine, and he shall prepare and mail notices of annual and special meetings of the stockholders; shall include in the notices of stockholders' meetings, such proposed amendments to the By-laws as are recommended by the Board of Directors or in writing by any stockholder; shall keep
- 4 complete minutes of all meetings of the stockholders; shall notify all directors of their election and obtain their acceptance of office or refusal to serve, and shall perform all other duties that he is required to perform by the laws of the State of Maine and these By-laws.

#### Section 6.—The Secretary:

The Secretary shall keep complete minutes of all meetings of the Board of Directors and Executive Committee; shall read all minutes of meetings of the Board of Direct-

ors and Executive Committee at subsequent meetings until approved by the Board and Executive Committee respectively; shall sign all minutes or meetings of the directors and Executive Committee; shall issue notices for meetings of the Directors; shall have custody of the seal of the Company; shall affix the seal to certificates of stock when signed by the President and Treasurer, and shall affix the seal, attested by his signature, to instruments in writing, when directed to do so by the Board of Directors, and to such instruments in writing as require, in the ordinary conduct of the Company's business, the affixing of the seal for their proper execution. He shall have custody of the stock books, books containing minutes of meetings of Directors and of the Executive Committee, and other books usual to corporations, exclusive of books of account and books containing minutes of meetings of stockholders, and shall prepare, seal, issue, transfer and cancel certificates of stock in conformity with such of the By-laws of the Company as relate thereto. When directed by the Board of Directors, he shall also sign with the President, all contracts, deeds and other instruments in writing. He shall prepare and submit to the Board of Directors, such reports and statements as it from time to time requests, and shall file such reports and statements as the Company is required to furnish by the laws of states and countries in which it transacts business. He shall attend to such correspondence and other duties as are incidental to his office; or assigned to him by the Board of Directors. He shall keep in the New York office of the Company, all books and records of the Company that are in his custody, except such books and records as the Company is required by law and by these By-laws to keep in the office of its resident Clerk in the State of Maine.

## ARTICLE IX.

### Sundry Regulations.

#### Section 1.—Assistant Officers:

The Board of Directors may create the offices of General Manager, Assistant Treasurer, Assistant Secretary, Auditor, and such other offices as it deems advisable, and



- 1 appoint to such offices, persons who appear to it to be well qualified to render the services required. The Board of Directors may at any time dismiss any person filling any of such offices, and the Executive Committee shall have like authority during the intervals between meetings of the Board. The salaries attached to such offices shall be fixed by the Board of Directors.

### Section 2.—Selection of Motion Pictures:

- 2 All motion pictures that the Company requires at each place of business that it operates in conducting that part of its business which consists in the leasing of motion pictures from the manufacturers and importers thereof, and the sub-leasing of such motion pictures to exhibitors of motion pictures, shall be selected by the representatives of the Company in charge of such places of business. The representative in charge of each such place of business that the Company operates, shall order directly from the manufacturers and importers of motion pictures, whose motion pictures the representatives of the Company are authorized by the Company to obtain and sub-lease, as many  
3 copies of any or all of the motion pictures of such manufacturers and importers, as each representative deems best in the interest of the Company, in conducting its business at the place of which he has charge.

The representative of the Company in charge of each such place of business, shall mail each day to the Company at its office in New York City, correct copies of all orders that he sends to manufacturers and importers of motion pictures on that day.

- 4 The Treasurer of the Company shall pay the manufacturers and importers of motion pictures, for all motion pictures that they supply to the Company at each place of business conducted by the Company, in filling orders given by the Company or its representatives in charge of its places of business.

### Section 3.—Auditing Committee:

The Board of Directors shall appoint an Auditing Committee consisting of two directors.

The President and Treasurer of the Company and mem-

bers of the Executive Committee, shall not be eligible to serve as members of the Auditing Committee. 1

Members of the Auditing Committee shall serve until their successors are appointed.

The Auditing Committee may employ to assist it, professional auditors not connected with the Company and may fix their compensation. It shall, at intervals of not more than three months, audit the books of the Company and verify the amounts of money on deposit.

#### Section 4.—Amendments to By-laws:

2

Each stockholder of record may propose amendments to the By-laws and have such amendments brought before the stockholders for action by them in conformity with the By-laws, by delivering the proposed amendments in writing, by mail or otherwise, to the Clerk of the Company.

The Clerk of the Company shall include such proposed amendments in the next notice that he prepared for a meeting of the stockholders.

The Board of Directors may propose and recommend amendments to the By-laws, and the Clerk shall include such proposed and recommended amendments in the next notice that he prepares for a meeting of the stockholders. 3

Mr. GROSVENOR: I ask counsel to produce a statement showing the list of stockholders of the General Film Company, said statement showing separately, the holders of common stock, and the holders of preferred stock, and the amount of stock held by each stockholder. I want it for several dates. First; May 1st, 1910, January 1st, 1911, January 1st, 1912, and January 1st, 1913. 4

By Mr. GROSVENOR:

Q. Mr. Marvin, at page 61 of the answer, there appears a list of the names of the original directors of the General Film Company, giving their names as follows, Jeremiah J. Kennedy. What company was he connected with at the time of the formation of the General Film Company? A. He was connected with the Biograph Company.

1 Q. As President? A. As President.

Q. What position did he hold with the Motion Picture Patents Company? A. He was Treasurer of the Motion Picture Patents Company.

Q. George Kleine. What was his position in the moving picture business? A. He had a personal license from the Motion Picture Patents Company to import motion picture films.

Q. He was one of the nine original licensees of the Patents Company? A. Yes.

2 Q. Seigmund Lubin. What was his connection? A. He was President of the Lubin Manufacturing Company.

Q. One of the original licensees? A. Yes.

Q. Of the Patents Company? A. Yes.

Q. And was he a stockholder in that company? A. Of which company?

Q. The Lubin Company? A. He was President of that company. I do not know whether he was a stockholder in it or not.

Q. Frank L. Dyer. What company was he connected with? A. He was connected with the Edison Company.

3 Q. In what capacity? A. I do not know his exact capacity.

Q. Was he connected with the Patents Company? A. He was.

Q. In what capacity? A. He was President at that time.

Q. Jacques Berst. What was his position? A. He was connected with Pathe Freres. I do not know just what his connection was. I think he was Vice-President.

Q. A man active and prominent in the business of Pathe Freres? A. Yes.

4 Q. What is his position to-day, besides his connection with Pathe Freres, which he still retains? A. Well, I understand that he is still a Director of the General Film Company.

Q. Samuel Long. What was his company? A. The Kalem Company.

Q. Was he an officer of that company? A. I think he was President of that company.

Q. The Pathe and Kalem Companies were both licensees of the Patents Company? A. They were.



Q. Gaston Melies? A. Gaston Melies had a license from the Motion Picture Patents Company for himself, and as attorney for George Melies of Paris to manufacture and import motion picture films. 1

Q. Alfred E. Smith? A. Alfred E. Smith was an officer of the Vitagraph Company, a licensee of the Motion Picture Patents Company.

Q. George K. Spoor? A. George K. Spoor was an officer of the Essanay Company, licensee of the Motion Picture Patents Company.

Q. William N. Selig? A. William N. Selig was an officer of the Selig Polyscope Company, a licensee of the Motion Picture Patents Company, 2

Q. Each of these ten Directors also became a holder of common stock in the new company, that is to say, in the General Film Company? A. I don't know.

Q. Was the common stock of the General Film Company, distributed to any other persons than the owners of, or officers of, the Patents Company licensees? A. I am not sure, but I do not think it was.

Q. You do not think it was distributed to any other than the Patents Company licensees? A. No. 3

Q. Now, are these men who were elected Directors in 1910, now Directors of the General Film Company? A. Not all of them.

Q. Take Jeremiah J. Kennedy. Is he a Director to-day? A. He is not.

Q. Who has succeeded him? Who represents the Biograph Company? A. It has no representative.

Q. How long ago did it cease having a representative? A. I think it was in May, 1912.

Q. Do you know who succeeded Mr. Kennedy? A. I think Mr. Percy L. Waters was elected a Director. 4

Q. What is his business? A. He was at that time the General Manager of the General Film Company.

Q. Is George Kleine a Director still? A. I believe he is.

Q. Seigmund Lubin? A. I think he is. I have no direct knowledge of the affairs of that company, and I have to speak from hearsay.

Q. That is, as to who is now Directors? A. Yes, sir.

Mr. GROSVENOR: Well, I won't pursue that as to the other names, and I will have the list presented.

1 Q. Beginning on page 53 of your answer, that is, of the answer of the Motion Picture Patents Company, which you signed as President, you give the reasons for the formation of the General Film Company—that is, you go into the conditions in the trade. Now, this morning I asked you one or two questions, about some of those statements, and I understood you to say that the statement: “Rental exchanges were financially irresponsible” should be changed so as to read, “Rental exchanges were sometimes financially irresponsible,” or, “Some rental exchanges were financially irresponsible.” Is that correct? A. I said that would be a more accurate description of the fact.

2 Q. Will you please produce a list, or perhaps you are now able to name some of the rental exchanges which, in 1910, the time that the General Film Company was formed, were financially irresponsible? A. I could not give that list from memory. I shall have to look it up.

Q. Are you able to state any? A. Not offhand.

3 Q. The next sentence is: “In many instances, they were exceedingly slow in making payment.” Are you able to name the rental exchanges who, in April, 1910, were exceedingly slow in making payment for films? A. Not without looking it up.

Q. How many instances were there? A. I do not recall.

Q. By April, 1910, the number of licensed rental exchanges which, in February, 1909, were 116, had considerably decreased, had it not? A. Yes.

4 Q. Now, are you able to name any instances of these rental exchanges which were exceedingly slow in making payment for films? A. Not without—not having any direct connection with the business of leasing films to rental exchanges, I would not care to state offhand the names of any exchanges that were delinquent.

Q. The next sentence is: “Manufacturers and importers were compelled to accept notes.” Now, is that an accurate statement, as a general proposition, or should that be modified to read: “Manufacturers and importers were sometimes compelled to accept notes?” A. That would be a more accurate statement of the fact.

Q. You were not compelled to accept the notes in all cases? A. We were not. I say “we.” The manufacturers were not.

Q. What per cent. of the cases were you compelled to

accept notes? A. I cannot tell that. I can only find out by communicating with the various manufactureres. It was a common complaint. 1

Q. The next sentence is: "These notes were not paid." Are you able to give any definite information on that point, or should that sentence also be modified to read: "Some of these notes were not paid?" A. I would not say as to that, as I had personally nothing to do with the collection of these notes.

Q. Did you make any inquiry before you signed this answer containing these statements? A. I know from the general discussion of the matter by manufacturers that such conditions commonly existed. 2

Q. Now, when you issued your licenses in February, 1909, you have stated in your answer the licenses were issued to the responsible exchanges. That part of the answer I call to your attention. It is at the bottom of page 47, and the top of page 48. Do you mean to say that these companies thereafter became irresponsible, the larger proportion of them? A. In some cases they did become irresponsible or we discovered later that they were not responsible.

Q. The exchanges which you issued licenses to were required to take not less than \$2,500 worth of film every month. Is that not correct? A. That is correct. 3

Q. And those to which you issued licenses were those which were able to take that amount? A. It was supposed they were able to take that amount.

Q. The next sentence: "The manufacturers and importers were compelled to discontinue the shipment of films, and brought suits to recover payment for films already shipped." Now, was that the common practice? Were they as a matter of fact compelled in most cases to discontinue the shipment of films and to bring suits to recover payment A. I would not say that they were compelled to do that in most cases, but they were in many cases. 4

Q. In the same paragraph: "Frequently these exchanges became bankrupt, involving the manufacturers in losses." Are you able to state how many of these exchanges became bankrupt? A. I cannot state that offhand.

Q. Of the 116? A. I cannot state that offhand.

Q. It was a very small proportion, was it not? A. I would not be willing to say that without looking it up. I had no direct connection with the leasing of the films.



1 Q. The next paragraph: "The rental exchanges would establish theatres or acquire an interest in existing theatres." Now, is that statement accurate, or should that be modified so as to read: "Some of the rental exchanges would establish theatres?" A. Many rental exchanges became interested in theatres.

Q. But it is not true as it reads— A. (Interrupting.) I do not understand that it says "all."

2 Q. It says: "The rental exchanges would establish theatres or acquire an interest in existing theatres." You do not mean that that applies to all theatres? A. To all exchanges?

Q. To all exchanges. Yes. A. Not to every one.

Q. (Reading): "The large majority of rental agencies thus acquired little circuits of theatres" etc. Is that an accurate statement? "The large majority," or should it be "some of the rental exchanges?" A. I think that condition applied to the majority.

Q. You are able to give definite information on that point, are you? A. As definite as that statement is.

Q. Now, can you furnish a list of some of those exchanges? A. I can.

3 Q. The next paragraph: "Exchanges would make contracts with exhibitors for service of a certain class based usually on the age of the film supplied. Such contracts were almost invariably broken." Now, upon what do you base that statement: "Such contracts were almost invariably broken?" A. Upon an enormous mass of complaints directed to the Motion Picture Patents Company by exhibitors from all over the country, making those statements. A great many of which, upon investigation, proved to be well founded.

4 Q. Have you preserved a record of those complaints? A. We have not preserved a classified record, but a multitude of them can be abstracted from the files of the company.

Q. There were about 116 rental exchanges, ranging down to when the Film Company was formed, to about 80 or 90? A. I do not think there were as many as that at the time of the organization of the General Film Company. I think there were between 50 and 60 exchanges licensed at that time.

Q. And these were doing business with how many thousands of theatres? A. With upwards of 5,000 theatres.

Q. Now, from how many of those theatres are you able to state, did you receive complaints? A. I cannot say offhand how many, but it was a very large number. 1

Q. The next paragraph: "Rental exchanges would resort to grossly unfair practices to other rental exchanges." Now, what do you base that statement upon? A. Upon reports from exhibitors, and reports from rental exchanges.

Q. Well, this refers to exchanges' troubles with exchanges. It says, "rental exchanges would resort to grossly unfair practices with other rental exchanges." Then, as a means of improving the business, you wiped out all the rental exchanges, is that right? A. No, we did not wipe out but very few of a large number. 2

Q. How many of those 116 rental exchanges whom you licensed in 1909, are today distributing the films of those nine licensed manufacturers? A. None of the rental exchanges that were—with one exception—that were licensed at that time, are now engaged in distributing films to exhibitors, but not because they were wiped out or their licenses cancelled, by the Motion Picture Patents Company. Many of them went out of business voluntarily. The one exception to which I refer is the Greater New York Film Rental Exchange, which, while not licensed by the Motion Picture Patents Company, has been permitted to handle licensed films. 3

Q. And it secured that permission by virtue of suit, hasn't it? A. I would not say by virtue of suit. No.

Q. Now, Mr. Marvin, speaking frankly, wasn't it the intent of the organizers of the General Film Company, when they formed the company, to get all this rental exchange business which was being done by these licensed exchanges? A. No; I cannot say that it was. The manufacturers who organized the General Film Company, were almost without exception, extremely reluctant to organize the General Film Company, or to have anything to do with the film rental business. They considered that it was a very serious question which might affect seriously their market for film. They were urged to take some steps to improve the rental conditions that were then existing. It was not easy to persuade them of the desirability of doing anything along that line. Finally, after months of solicitation and urging, they were prevailed upon— 4

Q. (Interrupting): By whom? A. Principally by myself. They were prevailed upon to start an experimental film rental exchange, to be run along lines that were as nearly

1 ideal as could be devised, and in the interests of the exhibitors. That exchange was started as an experiment, with the hope that it would be successful, and with the idea that if it was successful and was welcomed and approved by the exhibitors, that its field would be extended, so far as there should be a demand for it on the part of the exhibitors, and with the understanding that if it did not prove to be successful, and it did not meet with the confidence of the exhibitors, and the support of the exhibitors, that it would not be extended, and would not cause any commotion or disturbance in the existing market for film.

2 Q. Now, was your purpose entirely altruistic or was not the fact that you were to get—that is, by “you” I mean the licensed manufacturers—were to get the profits through the ownership of stock in the General Film Company, that is to say, the profits theretofore made by the rental exchanges, was not that fact one of the reasons which induced you to found the General Film Company, and to endeavor to expand its business? A. That was not one of the reasons that induced the manufacturers to organize the General Film Company. It is an absolute fact that the great majority, if not all of the manufacturers, believed that there would be no profit made by the General Film Company. They apprehended a loss of market in leasing their film. In order to compensate them for that possible loss of market, they considered that any profits that there were made, would, to a measure, offset their possible loss as to manufacture. The dominating influence that persuaded them to organize the General Film Company was to protect the exhibitors of the country, and to elevate the business, and thereby strengthen and secure their positions as manufacturers of motion pictures. They did not engage in the General Film Company or go into the film rental business for the purpose of making money, and they did not believe that they would make money.

4 Q. As a matter of fact, the General Film Company has been very profitable, has it not? A. The General Film Company has made some profit, but many manufacturers, or some of the manufacturers, have held that the owners of the General Film Company have lost money through the organization of the General Film Company, owing to a reduction in the sales of film and the increase of cost of productions necessitated by improving the service to exhibitors.

Q. Before the General Film Company commenced opera-



tion, and before it was formed, the organizers had prepared an estimate of the value of the businesses, of the aggregate value of the businesses of the different licensed exchanges then doing business. Is that not correct? A. Some estimates had been made of the probable value of the existing supply of film with a view to determining the amount of capital that might probably ultimately be required, if the General Film Company did meet with such a support on the part of the exhibitors as would warrant the extension of its business throughout the country. It could not reasonably incorporate and start its business without looking ahead to see what might ultimately be required in the way of capital to extend the business. 1 2

Q. Now, take page 70 of the answer. You speak, as an illustration of the growth of the theatres' business, as an illustration of the solidity of the business, of a \$500,000 motion picture theatre that is being completed in New York. Where is that theatre? A. On the corner of 116th Street and Seventh Avenue.

Q. Who owns that theatre? A. It is owned by the Seventh Avenue Theatre Company. The St. Nicholas & Seventh Avenue Theatre Company.

Q. Who owns the stock in that company? A. A part of the stock, a majority of the stock, is owned by Mr. J. J. Little and his associates. 3

Q. And who are his associates? A. I don't know. I think his son is one. I do not know what others.

Q. Are any of the licensed manufacturers interested in that theatre? A. Not to my knowledge. I can say definitely they are not.

Q. How about the theatre in Denver, Colorado. What is the name of that theatre? A. I don't know what theatre you refer to.

Q. I am referring to the one stated in your answer to be \$150,000 theatre in Denver, Colorado. What is that theatre? A. I do not know the name of that theatre. 4

Q. You do not know who is interested in it? A. No.

Q. In your answer you state, at page 61: "It cannot be said, and is denied that the control of the business of the General Film Company rests in this respondent," the respondent being the Motion Picture Patents Company. Who controls the Motion Picture Patents Company? There are two stockholders, are there not? A. There are.

1 Q. The Edison Company? A. Yes.

Q. And the Biograph Company? A. Yes.

Q. And the four directors of the Patents Company; are two of them connected with the Edison Company? A. Yes.

Q. And two of them with the Biograph Company. That is correct, isn't it? A. That is correct.

2 Q. Now, isn't it also correct that under the agreements with the Patents Company's licensees, no manufacturer can get a license from the Patents Company without being voted upon by all the Patents Company's licensees, each having a vote on a basis of the amount of new reels issued, that is, one vote for each 1,000 feet? A. Yes, that is true as to a license for manufacturing motion picture films.

Q. That is, no manufacturer can get a license from the Patents Company and be able to join this arrangement unless it has the vote of a majority of the Patents Company's licensees? A. What arrangement do you refer to?

3 Q. Well, I mean become a manufacturer under the Patents Company patents, and then have its products distributed to the licensed theatres. Now, it cannot get those rights unless it has the affirmative vote of the majority of the Patents Company licensees? A. It cannot get a license to manufacture licensed film, but it can get a license to manufacture projecting machines, or a license to use exhibiting machines.

Q. The commerce in the films is the considerable part of the commerce, isn't it? A. Yes.

4 Q. Can anybody get a license from the Patents Company to engage in that business of commerce in films without receiving the affirmative vote of a majority of the Patents Company licensees? A. They can get a license to sub-lease films and to use them, but not to manufacture them.

Q. Can anybody today get a license to manufacture and distribute films under the Patents Company licenses without receiving the affirmative vote of a majority of the Patents Company licensees? A. No.

Q. Each of the Patents Company licensees has a representative as a Director upon the Board of the General Film Company? A. No.

Q. Which does not? A. The Biograph Company.

Q. Each of the others has, does it not? A. I believe it has. 1

Q. The Biograph Company had a representative until May, 1912? A. Yes.

Q. Then nine of the Directors of the General Film Company are representatives of the Patents Company licensees? A. Yes.

Q. Is it not a fact that all the common stock of the General Film Company is distributed to the Patents Company licensees, or to officers of the Patents Company licensees? A. I think so. As I said before, I have no positive knowledge of that. 2

Q. And you understand that only the common stock has voting power? A. I so understand it.

Q. In spite of those facts do you still maintain that it cannot be said that the control of the General Film Company rests with the Patents Company? A. I do not see according to those facts how the Patents Company has any control whatever over the General Film Company.

Q. You maintain they are separate and distinct? A. Absolutely.

Q. Do you think that the fact that the manufacturers were engaging, through the General Film Company, in this rental exchange business, had any influence upon them, or induced them to reach this attitude, that all the rental exchanges were irresponsible, and that all of these conditions described in your answer were damaging the business? A. Why, no. Because those conditions existed prior to the organization of the General Film Company, and were the reasons which inspired the organization of that company. 3

Q. You think then, that the Patents Company and the General Film Company were acting impartially in cancelling the licenses, and in buying up these exchanges? A. Absolutely. Because it could be of no possible service to the General Film Company, for the Motion Picture Patents Company to cancel the licenses of an exchange, and it could be of no possible interest to the Motion Picture Patents Company that the General Film Company should buy the property of an exchange. 4

Q. To-day, as you have testified, not one of those exchanges is doing business, in other words, your attitude, or your opinion in regard to these rental exchanges is



1 that only the General Film Company had any beneficent intentions. A. I do not think any rental exchange other than the General Film Company had an beneficent intention, and I do not think any rental company other than the General Film Company, ever concerned itself at all about the interests of the exhibitors of the country, or the permanence of the business, nor the uplifting of the business. I think they concerned themselves only in getting as much money quickly out of the business as they possibly could, without regard to the general public, the exhibitors, or the permanence of the enterprise.

2 Q. You think it is much better that all the money should come to the General Film Company as the Patents Company licensee? A. Much better than what?

Q. Much better than that it should be distributed to the rental exchange companies under the former method of doing business? A. I think it is much better for the exhibitors of the country to pay money for their film service to a rental exchange that is interested in helping their business as exhibitors, and who have an interest in maintaining the decency of the business, and its permanence, owing to the interests that these Directors had as manufacturers, with large investments, in uplifting the entire motion picture business.

3 Q. And you think that not one of those rental exchanges had any desire to improve the business conditions? A. I never knew of one having any such desire.

Q. You think your attitude is a fair one, and uninfluenced by the consideration that the profits of these rental exchanges were to go to the General Film Company, and then come and be distributed among the Patents Company licensees. You think that your attitude is fair, and unbiased by that consideration? A. Absolutely. Because it is an open question to-day whether the manufacturers have profited through the organization of the General Film Company. Since the organization of the General Film Company, they have enormously increased the expense of their productions, so as to provide motion picture films of a very much higher order than were formerly obtainable. They have very largely multiplied the number of releases. I think they have doubled the number of subjects that they are putting out each week. That

leaves a reduction in the number of copies leased from each production. That means a very great reduction in the profits of the manufacturer. They have been inspired to do that because of the demand of the public for better motion picture exhibitions, and with the hope that it would so encourage the public who attend motion picture theatres throughout the country, that the entire business would grow to a very much larger extent than would be possible with the kind of motion pictures that were being distributed before.

Q. You believe in a control, a single control of this business? My question may not be clear, so I will read from your answer, at page 44: "To perfect the business of this art, the control must be single and systematic. If single, it must be lawful. If single, the instrumentality of corporations would be the most useful to systematically perfect the business, and to extend the exclusive use under the patent dominion to its ultimate, lawful and efficient limits. The motion picture business is not a technically public service employment. But that the business needed fair and effective regulation by some kind of single and efficient control, will appear hereinafter. The petitioner could not regulate it. The States would not. This respondent has been attempting to regulate it fairly and conscientiously towards all lawfully engaged in the art, until the petitioner began this suit 'to experiment on its case' against the defendants as hereinafter set forth." That represents your views? A. It does.

Q. Where is that quotation from, "to experiment on its case?" A. I do not know where that is from.

Q. This whole arrangement, the creation of the Patents Company, the drafting of all these licenses—I refer now to manufacturers' licenses under No. 12,192 and No. 12,037, and the licenses to the projecting machine manufacturers, and the licenses to the exhibitors, and the formation of the General Film Company, and the licenses granted to it by the Patents Company—all this arrangement was devised for the purpose of securing this control which you refer to in this paragraph of your answer which I have read. Is that right? A. No. I would not say that all of those things were devised—

Q. (Interrupting.) Well, in part, the creation of the

- 1 Patents Company was due to your desire to bring about this control which you have stated you deem necessary.

Mr. CALDWELL: I object to that.

- 2 A. No, I would not say that was true. Many of those conclusions that were reached in the end were not apparent in the beginning, but in the very beginning, at the time the Motion Picture Patents Company was organized, it was apparent that if it was possible to restrict certain films from exhibition—and I refer to indecent films that were quite commonly exhibited in the low dance halls and saloons at that time, and were bringing discredit upon the entire business—if those conditions could in some way or other be changed, and the circulation of that film prevented, that it would benefit the entire business, and every decent person in the country. The exhibition of such films was bringing the art into discredit. Clergymen throughout the country, and those interested in the problem of civic welfare, were making an outcry against the motion pictures *per se*. The good lectures, the educational pictures, refined pictures, the uplifting pictures, were bearing the odium of that attack, and it became apparent to anyone that the elimination of that class of exhibitions would benefit the art.

3 Q. You state in your answer that all the manufacturers and importers doing business in the United States in 1908, took out licenses from the Patents Company? A. I did not say all of the importers.

Q. Well, all the manufacturers? A. The manufacturers.

- 4 Q. Was all the stuff that was injuring the public, to which you have just referred, was that all made abroad? A. I believe it was. There was a great quantity of indecent films coming over here from Europe.

Q. And you think the only way to remedy that condition was to form a single company controlling the whole business? A. I did not say that.

Q. Well, I ask you if you think that? A. I do not know how many different ways there were of doing it. I think that the organization of the Motion Picture Patents Company did have that effect to a certain degree. Not



entirely, because they were not able, owing to various causes, to absolutely enforce their patents—a certain amount of film continued to come into the country in infringement of their patents, which they were unable absolutely to stop. 1

Q. When film is imported, what patent do you claim it violates? A. When?

Mr. GROSVENOR: Read the question.

The question was repeated to the witness.

A. Well, I asked the question, “when,” because— 2

Q. (Interrupting.) If I am not clear, I will change my question. A. You will change it?

Q. If it is not clear to you. I say, when films are imported to-day from abroad, and by film I mean moving picture film positives, what patent is infringed? A. When such film is sold for use on a projecting machine—

Q. (Interrupting.) I am not saying when it is sold. I say when it is imported into this country, what patent does it infringe? If you cannot answer that, go on and answer it in your own way? A. I am not finicky about the matter, but—the film does not infringe the patent at all. It is the man who handles the film, as I understand it, and the importer who brings the film into this country when he sells that film, violates the patent covering the film, and if he sells that film intentionally for use upon a patented projecting machine, he becomes a contributory infringer upon the patented projecting machine, and that is why I asked “when.” 3

Q. Prior to the formation of this Patents Company, you had maintained throughout your business life, that the film was unpatented, hadn't you? A. No. We knew that the film was patented, but we claimed that we would be able to defeat the film patent. 4

Q. And you claimed that you had defeated the film patent? A. Well, we claimed that we had defeated the first general patent of Edison, which covered film and camera. That patent—

Q. (Interrupting.) You never imposed any restriction upon the use of films with your projecting machines prior to the beginning of 1908, when you and the Edison people

1 had that trouble, did you? A. Prior to that time, the only patent on projecting machines that we owned was the Pross patent, which was not in common use until 1907, and then we did not sell machines with that Pross shutter on them, and so we were not in position to put any restrictions upon any machines.

Q. Well, we went into those patents this morning. Returning to this paragraph, which I read from page 44, you say, "To perfect the business of this art, the control must be single and systematic." Now, by "control" there, you  
2 refer to such control as has been exercised by the Patents Company licensees? A. Well, some control. That is a very broad question. I would not like to say offhand without considering just what bearing that had.

Q. You say also, "The business needed fair and effective regulation of some kind by single and efficient control." Did you endeavor by the Patents Company and these licenses to impose that single and efficient control which you thought necessary?

3 Mr. CALDWELL: That question is objected to as incompetent.

A. The Motion Picture Patents Company endeavored to exercise such a control of its licenses as would enhance its business interests by extending the use of its patented apparatus and augmenting its royalties.

Q. Read the question, will you please, and see if you can give a yes or no answer to it.

The stenographer repeats the question.

4 A. I do not think I can answer that question yes or no.

Q. Well, did you attempt by the Patents Company and these licenses to impose or create that fair and effective regulation of the business which you thought necessary? Can you answer that yes or no? A. We did, so far as the actions of our licensees in handling licensed film and apparatus was concerned.

Q. I direct your attention to this sentence in your answer, at page 38, the top of it, referring to conditions prior to the formation of the Patents Company: "There was then

not a single concern or individual in the United States that was able to do a lawful business in the motion picture art, either in making negatives or positives, or importing or using or renting or constructing machines to lawfully exhibit them." And there is something else I want to read to you on the same page: "Nobody could move lawfully, therefore everybody began to move unlawfully by infringing uses against the one or the other." And on page 40, you say: "There were then two broad factions in the business. On the one side, the Edison licensees, and on the other side, the Biograph licensees, each infringing the patents of the other." And on page 52: "Prior to the organization of this respondent, no lawful projecting machine was ever manufactured or sold by any person whomsoever." On page 16, you say, at the bottom of the page, "Edison, therefore, became an infringer in respect to his camera" referring to the Latham patent. Mr. Marvin, this statement, "That there was then not a single concern or individual in the United States that was able to do a lawful business in the motion picture art, either in making negatives or positives, or importing or using or renting or constructing machines, to lawfully exhibit them." Do you mean to say that each one of these defendants in this suit were doing business prior to the formation of the Patents Company in an unlawful manner, so far as patents were concerned? A. I do.

Q. Each one of them was wilfully and deliberately violating all the patent rights of every other? A. Yes, sir.

Q. Not one of them had any regard or paid any attention to ordinary rules of property rights respecting patents? A. Not to my knowledge.

Q. You had no regard for the patent rights of others? A. We did not.

Q. The Edison Company had no regard for the patent rights of others? A. Apparently not.

Q. As a matter of fact, prior to the formation of the Patents Company, you claimed that you did have a right to sell these films, didn't you? A. We claimed that we had a right on the ground that the patents covering the films were invalid.

Q. This statement and this contention which you make now today, as to the lawfulness of your business, as conducted by you prior to the formation of the Patents Com-



1 pany, that statement which you now make is directly contrary to the statement which you made prior to the formation of the Patents Company, is it not? A. I do not see that it is. I say now that we did business openly in defiance of the patents known to exist. I said then that we claimed that those patents were not valid, and we hoped to upset them in the Courts, but that did not deter us from going on and doing business in the meantime. That, I believe, is the common rule of business with patents.

2 Q. Well, is there a common rule in business, as far as your experience goes relating to patents, for there to be this wilful disregard of the patent rights of others, which you have testified to were the prevailing conditions prior to the formation of the Patents Company? A. I think it is very uncommon for people engaged in business to pay much attention to the patents unless the owners of the patents make efforts to enforce the patents.

3 Q. As I understood your last answer, you maintain that your position today on these patents is just what it was prior to the formation of the Patents Company? A. Oh, I did not mean to say that at all, Mr. Grosvenor. I mean to say that our position when we are fighting a patent that belongs to somebody else is radically different from our position when we own the patent and we are trying to enforce it.

Q. You mean you state you believe one thing at one time, and then when circumstances change, you would say you believe another thing? A. No, I have not said I believe anything of that sort.

4 Q. Well, now, before this Patent Company was formed, referring now to Exhibit No. 55, being that statement entitled "The Facts," you recollect, which was sent around by the Mutoscope or Biograph Company, your company, in referring to this patent No. 12,192 on the film and suits thereon, you say, "no such suit has been pressed, so far as we are aware, against any other person or corporation during the past five years," don't you? A. I think that appears in that statement.

Q. And you also sent around quotations from the opinion of the Court in the suit which you won against the Edison Company, in which you print in black type a statement respecting Edison and the film "he was not the

inventor of the film," didn't you? A. Yes, we sent around such statements. 1

Q. But today, now that you have come in under the Patents Company, you claim that that Patent No. 12,192 covers all films, all positive motion picture films, is that right? A. I think you are confusing the matter, Mr. Grosvenor, by that quotation. I explained before that that quotation in heavy type I understood at the time to mean, and understand now to mean, that Mr. Edison was not the inventor of the raw stock, the base upon which the motion pictures are printed, but I do claim now that Mr. Edison was the inventor of the motion picture strip. The strip of film with the motion pictures printed upon it, which is distinct from the raw film stock. 2

Q. Mr. Marvin, when you sent that circular around, were you talking about the raw film or the photographic film, the film with the pictures on it? A. We were talking about either—

Q. (Interrupting.) You were not talking about either—  
A. (Interrupting.) That was a quotation from a decision of the Court which we were quoting for the information of the people. 3

Q. I say, does this circular have relation to the raw film manufactured by Eastman, or does it not have relation to the film with pictures on it which you were distributing in the trade? A. You mean the quotation from the decision of the Court?

Q. No, this pamphlet? A. Well, that pamphlet has reference to the general patent situation. We desired the public to believe that the situation was just as favorable to the Biograph Company as was possible. It was commercially necessary for us to encourage the people to believe that, and we took the most hopeful view of the situation we could, as is customary in cases of that kind. If the Edison Company had issued a circular, they would probably have been equally hopeful the other way. 4

Q. And you think your position today is perfectly in accord with your position when you sent this circular around? A. No, I would not say that. It is very different. Then we were fighting the patent, and now we own it. Then, we were belittling it, now we are making the most of it.

Q. This is the patent that has been held bad since? A. I believe there has been a decision in the District of Columbia

1 against the patent, but we do not regard that as conclusive.

Q. Is this a true statement on page 11: "The film contains one essential invention, Edison's only?" A. Yes. I so understand it.

Q. Is this a true statement, page 8: "The film is flexible, tough and transparent or translucent?" A. Is that a true statement?

Q. Yes. A. Yes.

2 Q. The first statement appears in the answer at page 11, folio 22, and the second statement, at page 8, folio 19. Now, it is necessary, isn't it, that the film be flexible, tough and transparent or translucent? Those are necessary qualities to a motion picture film? A. Yes.

Q. What did Edison do to the film to give it this flexibility? A. I do not think he did anything. The raw stock that Edison used was flexible.

Q. The flexibility of the film was given to it by Eastman?

A. Well, it was a characteristic of the material that Eastman used.

Q. Well, it is a characteristic of the material which Eastman produced? A. Used or produced.

3 Q. Yes, and produced? A. Well, I don't know whether he made the celluloid base, or whether he bought the celluloid base and improved it. I am not sure about that. Some manufacturers of celluloid film have bought the base from celluloid companies, and coated it. I do not know what Eastman did.

Q. The flexibility of the film upon which the picture is printed,—that flexibility does not result from anything that Edison did to the film, does it? A. Oh, no, no.

4 Q. You say toughness is also requisite. Does the toughness of the film, does that result from anything that Edison has done to the film or ever did to the film? A. No.

Q. Was it any invention he ever discovered or made? A. Not so far as I know.

Q. It was also necessary, you stated, that film be transparent or translucent. Is there anything Edison ever did to the film that made it transparent or translucent? A. I don't think so.

Q. Well, do you still maintain that that is an accurate statement in the answer: "The film contains one essential invention, Edison's only?" A. Well, in making that statement in the answer, I had reference to the inventions re-



lating to the art of motion pictures. Now, in the composition of the materials that go to make up a photographic film, there may have been many inventions. There may have been an invention in the construction of the celluloid, an invention in the construction of the emulsion, and many other inventions concerned with the raw materials, and perhaps I should have been more accurate if I had said that the motion picture invention was one, and that of Edison, but I did not take the pains to go into the composition of all of the materials composing the structure of the film, and whether there are any existing patents on any of those materials or not, I do not know.

Q. It is, then, an inaccurate statement to say that the film "contains one essential invention, Edison's only?" A. No, I would not say that that was an inaccurate description. When I say "essential" I mean essential to its use as a motion picture commodity. It seems to me that it would be an unnecessary refinement to go into the inventions relating to the composition of the matter. It is as if I had a match safe made out of some material, and the design of the match safe was such that it was susceptible of being patented, and was patented, and one patent covered the article. I would say that that match safe contains one invention, and that is it. But if you inquired into the composition of the alloy that composed it, or the means of fastening it together,—there might be a multitude of patents there which were commodity patents, and which might find their way, in an indirect manner, into the composition of the match safe, but I think it would be a perfectly accurate statement, in general parlance, to state that the match safe was covered by one fundamental patent; and that is what I had in mind by saying that the motion picture film contained one invention, and that was the invention of Edison.

Q. Do you know anything about the manufacture of the film? A. Very little.

Q. How many—you know enough about the business to know that the composition of the film is most material? A. Is what?

Q. Is most material,—important. A. I do not understand that question.

Q. You know that the film produced by Eastman and used by the moving picture manufacturers, is the result of

1 years of experimenting and research? A. Oh, yes. Yes, I know that.

Q. The composition of it is most important, isn't it? A. Yes, but the film may be made of an entirely different composition which perhaps may be as good as that film.

Q. In 1908, was there any other film in this country which was made, which could be used successfully for moving pictures? A. Oh, yes, any quantity of it.

2 Q. By whom was it made? A. Made by Luniere in France, and imported into this country, and there were several other European manufacturers who were trying to find a market here for film. Sending over samples. Claiming results equal to Eastman. Some people claimed that Luniere's film was superior for making motion picture negatives to the Eastman film.

Q. Will you go back to the question, and read it?

The stenographer repeats the question to witness.

3 Q. When I say "made," I mean made in this country. Was there any film made in this country? A. I do not think anybody but Eastman at that time was making commercial motion picture films in this country. The other supply came from abroad, but I understood your question to be, "was there any film in this country?"

Q. Do you know of any kind of material other than this transparent or translucent film which can be used for the production of moving pictures, which will receive a picture? A. I know of other material besides the celluloid material used commonly in the production of the ordinary Eastman film. Mr. Eastman some time ago put out a film with a nitro-cellulose base, which was entirely different from the celluloid base of the other film.

4 Q. That is within two years, two or three years? A. Yes.

Q. That is since 1908? A. Yes, and I understand that there are foreign manufacturers who are making film with still a different base. I do not know the composition of it.

Q. When you get, Mr. Marvin, a supply of film from the Eastman Company, what do you do with it when you get it at your Biograph establishment? A. We use it.

Q. How do you use it? A. Well, the film—

Q. (Interrupting.) What do you do with it? A. The film is first perforated.

Q. And you use a perforating machine for that, don't you? 1

A. Yes. And then, if it is negative film, it is passed through the camera, and then it is developed and dried. Then it is used in printing positives. If it is positive film, after it is perforated, it is run through a printing machine in conjunction with a negative film, and the picture is printed on it.

Q. All manufacturers do that, don't they? They just take the film which Eastman gives them, and run it through the camera after they perforate it? A. Yes, I think they do. Sometimes the film is treated before it is run through the camera by steaming or some process like that so as to eliminate the danger of static electricity. 2

Q. The fact that Eastman has created this film has made successful, or made possible, the motion picture art, is that not correct? Was there any motion picture art prior to the time when he manufactured his first film? A. There was not.

Q. Is there anything that can be substituted today in the camera for this film? A. For photographic film?

Q. Yes. A. I don't know of anything that could be successfully substituted for the photographic film of some manufacture.

Q. Do you still maintain that this is an accurate statement: "The film contains one essential invention, Edison's only?" A. I do. 3

Q. Is there any patent on that film manufactured by Eastman, do you know? A. I do not know. I think he has patents on his process. I am not sure.

Q. On page 35 you say, referring to the films produced by Edison: "These films were produced by his camera, that embodied, not only his invention, but the invention of Latham." Is that a fair statement? A. I think so.

Q. Has not a court held that the Latham patent does not apply to a camera? A. One court held so, as to two Judges, and one Judge dissented. My opinion is that the two Judges are wrong. 4

Q. The only court that has passed upon the question takes a contrary view from that given in the sentence I have quoted? A. I do not so understand, Mr. Grosvenor. I think the court decided that the patent could not cover cameras, owing to some disclaimer or abandonment or something of that kind of Latham, but I do not think that they ever held that the invention of Latham did not reside in the camera.



1 This was the purest nonsense for them to so hold, as you will note from an observation of those sketches in the answer.

Q. You distinguish then between invention and patent?

A. Oh, certainly. You may have a perfectly invalid patent on a bona fide invention.

Q. Yes. When you use the statement: "These films were produced by a camera that embodied not only his invention, but the invention of Latham," you do not want to give, by that sentence, the impression that Edison's camera infringed the Latham patent? A. Oh, yes, I do. When I wrote that statement I had in mind the fact that that camera involved  
2 the invention of Latham as patented, and was covered by Latham's patent, and I think so still.

Q. Then on page 36, you say: "Six or eight other concerns were engaged in importing films from Europe, which infringed Edison's film re-issue." Prior to the formation of this Patents Company, you were contending just the reverse, that the films imported did not infringe Edison's film re-issue patent, did you not? A. No. I claimed the Edison film re-issue was invalid.

Q. But you now claim it is valid? A. Yes.

Q. So, in that respect, your position has changed? A.  
3 Yes.

Q. On page 45, I see you state: "This respondent, although in form a holding company, is, and always has been in substance a Trustee." Trustee for whom? A. Trustee for the original owners of the patents.

Q. On page 55, after enumerating a number of reasons which you urge as justifying the formation of the General Film Company, you state: "Obviously, the exclusive uses vested in the rental exchanges needed reasonable regulation, or else the distribution of films would continue to be unfairly conducted." One of the purposes of the formation of the  
4 General Film Company, I take it, was to accomplish that "reasonable regulation" was it not? A. Yes. One of the purposes of the organization was to regulate the supply of film furnished by that organization to its customers in such a way that its customers would derive great benefits.

At this point, an adjournment was taken until 10.00 o'clock A. M., Friday, January 17th, 1913, at the same place.

New York City, January 17th, 1913. 1

The hearing in this case was resumed at the McAlpin Hotel, New York City, on this January 17th, 1913, at 10.00 o'clock A. M.

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

Also JOHN R. DARLING, Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company. 2

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig. 3

Thereupon HARRY N. MARVIN, the witness subpoenaed by the Petitioner, resumed the stand for further examination.

Direct examination (continued) by Mr. GROSVENOR:

Q. Mr. Marvin, you produced some letters under subpoena relating to the formation of the Patents Company, or relating to the License Agreements. I show you a letter dated July 30th, 1908, addressed to you and signed "Thos. Armat." Will you read that (handing paper to witness)? 4  
A. (Witness examining paper.) Yes.

Mr. GROSVENOR: I offer it in evidence.

The paper is marked Petitioner's Exhibit No. 65, and is as follows:

1

**Petitioner's Exhibit No. 65.****ARMAT MOTION PICTURE COMPANY**

Owners of Patents Covering all Projecting Machines in use in this Country, and also of the business of the American Kinetoscope Co., and the N. Y. Photo-Projecting Company, American Patents, 586,953, 673,992, 578,185, 580,749, 588,916, 627,930, and Foreign Patents.

2

Cable Address: ARMAT, Washington. Hutchins Building  
A. B. C. and Lieber Code Used.

'Phone: Main 92.

Washington, D. C.

July 30th, 1908.

Mr. H. N. Marvin,

11 East 14th St., New York, N. Y.

Dear Mr. Marvin:

3

I am glad to know that things are shaping up a bit and am ready to come over almost any day, in fact was planning to take a trip through New York City about the middle of next week.

Yours very truly,

(Signed) Thos. Armat.

4

Q. At the time this letter was written, negotiations had been commenced with a view to terminating the warfare between the Biograph and Edison factions? A. Yes.

Q. This letter which I next show you, being dated October 5th, 1908, and addressed to Thos. Armat, is a copy of a letter written by you to him on the date indicated (handing paper to witness)? A. (Witness examining paper.) I presume that it is.

Mr. GROSVENOR: I offer it in evidence.

Paper marked Petitioner's Exhibit No. 66, and is as follows:



**Petitioner's Exhibit No. 66.**

1

October 5th, 1908.

Mr. Thos. Armat,  
Hutchins Bldg.,  
Washington, D. C.

Dear Mr. Armat:

Replying to yours of the 2nd, I enclose you herewith a letter addressed to Messrs. Swartzell, Rheem & Hensey. I am sending this letter to you in order that you may hand it to these gentlemen, as you failed to give me their Washington address.

2

Nothing new has transpired in the moving picture situation, but we understand that negotiations are in progress between the Edison Company and their licensees, and we anticipate an early decision in the matter.

I shall be glad to advise you as soon as there is anything to report.

Very truly yours.

3

---

By Mr. GROSVENOR:

Q. In this letter you state "Nothing new has transpired in the moving picture situation, but we understand that negotiations are in progress between the Edison Company and their licensees, and we anticipate an early decision in the matter." By the term "Edison Company and their licensees" you refer to the manufacturers and importers who had taken out licenses from the Edison Company in the early part of 1908? A. I do.

4

Q. The next paper I show you is copy of a letter dated Oct. 24, 1908, addressed to Mr. Frank L. Dyer, Legal Department, Edison Mfg. Co. That is a copy of a letter written by you to Mr. Dyer (handing paper to witness)? A. (Witness examining paper.) I assume that it is.

Mr. GROSVENOR: I offer it in evidence.

Paper marked Petitioner's Exhibit No. 67, and is as follows:

1

**Petitioner's Exhibit No. 67.**

Oct. 24, 1908.

MR. FRANK L. DYER,  
Legal Department,  
Edison Mfg. Co.,  
Orange, N. J.

Dear Sir:

2

I hand you herewith a suggestion from Mr. Kleine for a modification in his contract and we would be glad to have you use your discretion as to introducing this modification.

Yours very truly,

HNM/REL.

Enc.—1

---

By Mr. GROSVENOR:

3

Q. It states: "I hand you herewith a suggestion from Mr. Kleine for a modification in his contract and we would be glad to have you use your discretion as to introducing this modification." Do you recall what that modification related to? A. I do not.

Q. The matter you were considering and referring to in this letter was the license agreement which Kleine subsequently took out from the Patents Company? A. I think it was.

4

Q. I show you letter dated Oct. 30th, on the letter head of the Kleine Optical Company, signed "Kleine Optical Company, per G. K.," and also copy of a letter dated Nov. 2nd, 1908, addressed to Mr. George Kleine (handing papers to witness). Are those papers, one of them a letter received by you from the Kleine Optical Company, and the other, your reply? A. Yes, I believe they are.

Mr. GROSVENOR: I offer them in evidence.

Papers marked Petitioner's Exhibits Nos. 68 and 69, and are as follows:

**Petitioner's Exhibit No. 68.**

1

**KLEINE OPTICAL COMPANY.**

Projection Apparatus

Home Office: 52 State St.

Chicago, Oct. 30th, 1908.

Mr. H. N. Marvin,  
11 E. 14th Street,  
New York, N. Y.

2

My dear Mr. Marvin:—

The Montreal office is hammering us because of the Kinetograph competition, and I enclose telegram received yesterday.

The delay in bringing matters to a focus is being borne patiently, but at the same time this question has affected our policy seriously for two months past. A number of important rental points in the United States which I had slated for opening September 1st. were dropped, but if for any reason there should be a hitch in the finish we will have lost valuable time. None of our branch managers know what is going on, and more or less important questions are coming up constantly, and apparent indifference or neglect on my part, is having a demoralizing effect. Among other matters, several leases of our branches are expiring and the question of renewals is being forced upon me.

3

The situation at Montreal is hurting our business, and as there seems to be no conclusion to negotiations, I think that this matter might be taken up with Percy Waters. He cannot expect to hog the entire market, but continued inattention to the situation on my part will not only discourage our Montreal man, but will also prove costly.

4

I do not wish to add to your troubles, but I hope that the main question will be settled shortly. My import orders have been seriously influenced, as we are having a



1 continuous shortage because I do not want to have a big stock come in after an arrangement is made.

Very truly yours,

KLEINE OPTICAL COMPANY,

Per G. K.

BRANCH OFFICES:

New York, N. Y., 662-664 Sixth Ave.

Montreal, Canada, La Patrie Building.

2 Denver, Colo., 302 Boston Building.

Seattle, Wash., 309 Mehlborn Bldg.

Des Moines, Iowa, 229 Commercial Bldg.

Indianapolis, Ind., 214 Traction Building.

Birmingham, Ala., Harrington Building, 2008½ Third Ave.

Kleine Optical Co. of Missouri, St. Louis, Mo.  
523 Commercial Building, Sixth and Olive Sts.

---

**Petitioner's Exhibit No. 69.**

3

Nov. 2/08.

Mr. Geo. Kleine,  
c/o Kleine Optical Co.,  
52 State St.,  
Chicago, Ill.

Dear Mr. Kleine:

4

Replying to your two favors of the 30th, in case Mr. Peckham writes us for film, we will refer him to our Chicago office, The Kleine Optical Co.

In reference to the Montreal matter, I am very sorry to note you are having so much trouble and while we wish to assist you in every manner, I hesitate very much to take this subject up at this time. It appears to be only a matter of days now when some definite results will be reached. Mr. Philipp, after a considerable absence, took up the license agreement for Mr. Berst last week and I spent two or three days with him in conference. He is

pushing this matter along without a moment's loss of time, but Mr. Philipp thinks some modification in the license forms desirable. We have agreed upon all of the terms and Mr. Philipp is putting the matter in final shape. I have strong hopes that something definite will be accomplished this week, and owing to the critical condition of affairs, I dislike to raise any points that might possibly develop any feeling. I am satisfied that now that Phillip has taken up the matter in earnest, the affair will move forward to a rapid conclusion. 1

I shall probably have occasion to write you again in this matter in a day or two. Meantime, I can only beg you to exercise such patience as the circumstances seem to recommend. 2

Yours very truly,

HNM/REL.

---

Q. In this letter Mr. Kleine states: "My dear Mr. Marvin. The Montreal office is hammering us because of the Kinetograph competition, and I enclose telegram received yesterday." What does he refer to there? A. Mr. Kleine was at that time conducting a rental business in Canada, and the Kinetograph Company, a rival concern, was also renting film in Canada. 3

Q. Was that an exchange that was selling the Edison film? A. The Kinetograph Company?

Q. Yes. Renting the Edison films? A. I think it was renting the Edison films as well as some others.

Q. That is, of the Edison licensees? A. I think so, but I am not positive of it.

Q. It was not representing the Biograph interests, anyway? A. Well, I think the Biograph Company was supplying some films to it, but I am not sure upon that point. 4

Q. He goes on: "The delay in bringing matters to a focus is being borne patiently, but at the same time this question has affected our policy seriously for two months past. A number of important rental points in the United States which I had slated for opening September 1st were dropped, but if for any reason there should be a hitch in the finish we will have lost valuable time. None of our

1 branch managers know what is going on, and more or less important questions are coming up constantly, and apparent indifference or neglect on my part is having a demoralizing effect. Among other matters, several leases of our branches are expiring and the question of renewals is being forced upon me." Now, you understood that his reference to "bringing matters to a focus" referred to the delay in consummating the arrangement with the Patents Company.

2 Mr. CALDWELL: That question is objected to as leading. Let the counsel ask the witness what he did understand by it.

A. I understand that he referred to the delay in securing a license under the Edison patents.

Q. By whom? A. I do not understand that question.

3 Q. You say he referred to the delay in obtaining a license under the Edison patents? A. The delay in his obtaining a license under the Edison patents. He hoped if the organization was effected, that he would obtain a license under the Edison patents, and if he did obtain a license under the Edison patents, he did not care to extend his rental business.

Q. Who is the Percy Waters referred to in this letter?

A. That was Percy Waters of the Kinetograph Company, which was a film rental exchange.

Q. He is now a Director in the General Film Company? A. He is not. He never served as a Director in the General Film Company. He was elected, but he resigned without serving.

4 Q. Mr. Kleine also states: "My import orders have been seriously influenced, as we are having a continuous shortage because I do not want to have a big stock come in after an arrangement is made." Under the license agreement entered into with Kleine, he was barred from importing films of any manufacturers except the Urban-Eclipse and the Gaumont. Is that not correct? A. Yes.

Q. And at the time he wrote this letter, he was importing films of other manufacturers? A. Yes.



Mr. GROSVENOR: I offer in evidence copy of letter dated November 6th, 1908, to Mr. George Kleine. 1

Paper marked Petitioner's Exhibit No. 70, and is as follows:

**Petitioner's Exhibit No. 70.**

Mr. George Kleine,  
c/o. Kleine Optical Co.,  
52 State Street,  
Chicago, Ill.

2

Dear Mr. Kleine:

Mr. Philipp has been giving his attention to the Berst contract for the last week and we have had several pro-  
tructive conferences with him. He has altered somewhat  
the general plan of the contract, but I think the alterations  
have been desirable. We have agreed upon all of the main  
points, but nothing in the way of closing the matter can  
be done until the return of Mr. Eastman, who will be away 3  
until the 19th. We have every reason to expect, however,  
that matters can be cleared up with all parties very soon  
after the 19th. I fear, however, you cannot expect any  
more definite news until after that date.

Nothing has arisen that will modify your relationship  
with the affair.

Yours very truly,

HNH/REL.

4

Q. In Exhibit No. 70, being a letter addressed by you  
to George Kleine, dated November 6, 1908, you state, "Mr.  
Philipp has been giving his attention to the Berst contract  
for the last week." By the Berst contract, you mean the  
license agreement subsequently entered into between Pathe  
Freres and the Patents Company? A. I do.

Q. The Mr. Eastman referred to in the letter, is Mr.  
George Eastman, President of the Eastman Kodak Com-  
pany? A. It is.

1           Mr. GROSVENOR: I offer in evidence letter of  
November 23, 1908, to Mr. George Kleine.

Paper marked Petitioner's Exhibit No. 71, and  
is as follows:

**Petitioner's Exhibit No. 71.**

November 23, 1908.

2           Mr. George Kleine,  
Kleine Optical Company,  
52 State Street,  
Chicago, Ill.

My dear Mr. Kleine:

3           I have yours of the 20th. The revision of the licensee's  
agreement by Mr. Philipp, the attorney for Pathe, coupled  
with the two weeks absence of Mr. Eastman, who is a factor,  
has involved a great deal of delay, and has called for a con-  
siderable re-adjustment of the technical form of the papers. I  
4 am glad to say that I believe the general scheme has been materi-  
ally improved, and I see no reason whatever to apprehend  
any failure of the final consummation. The general conditions  
to be covered have not been materially altered, and I suppose  
it will interest you most to have me say that your own posi-  
tion will not be in any way less favorable to you. The great-  
est diligence is now being exercised by all parties, and I  
am very hopeful of a prompt settlement. In view of this  
I believe your best interests will very soon lie in the direction  
of the highest possible tariff on imported goods. The attor-  
ney of the Eastern Company for supplying films for the  
4 manufacturer of titles is not in any way significant.

Please keep this letter entirely confidential, even from  
your business associates, and any others who are directly  
interested in the affair, as my remarks are intended for your  
personal information only.

Very truly yours,  
AMERICAN MUTOSCOPE & BIOGRAPH CO.  
HNH/L.

By Mr. GROSVENOR:

1

Q. Exhibit No. 71, being copy of a letter addressed by you to George Kleine, dated November 23, states: "The greatest diligence is now being exercised by all parties, and I am very hopeful of a prompt settlement. In view of this I believe your best interests will very soon lie in the direction of the highest possible tariff on imported goods." Was there some agitation about this time on the question of changing the tariff as applied to films, motion picture films? A. There may have been. I do not recall it.

Q. That letter of Mr. Kleine referred to in Exhibit No. 71, being a letter of November 20th, you have not produced. Will you see if you can find that letter? A. I will search again, but I made a thorough search already.

2

Mr. GROSVENOR: I offer in evidence a letter dated November 23, 1908, to Frank L. Dyer.

Paper marked Petitioner's Exhibit No. 72, and is as follows:

**Petitioner's Exhibit No. 72.**

3

November 23, 1908.

Frank L. Dyer, Esq.,  
Legal Dept., Edison Mfg. Co.,  
Orange, N. J.

Dear Sir:

I am pleased to acknowledge receipt of two copies of the manufacturer's agreement. In discussing matters on Saturday with Mr. Philipp, it seemed desirable not to exclude export machines from a payment of royalty, and Mr. Philipp has drawn the license agreement along those lines. This is, however, a matter which we can take up further at a joint conference.

4

I am sending one copy of the agreement to Mr. Philipp.

Yours truly,

AMERICAN MUTOSCOPE & BIOGRAPH CO.

HNM/L.



1 By Mr. GROSVENOR:

Q. This is a letter dated November 23rd, addressed to Frank L. Dyer. You state: "I am pleased to acknowledge receipt of two copies of the manufacturer's agreement." That sentence referred to preliminary drafts of the license agreement with the manufacturers subsequently entered into with the Patents Company? A. I think it referred to agreements with manufacturers of projecting machines.

2 Mr. GROSVENOR: I offer in evidence letter dated November 24, 1908, addressed to Mr. Thomas Armat. Paper marked Petitioner's Exhibit No. 73, and is as follows:

**Petitioner's Exhibit No. 73.**

November 24, 1908.

3 Mr. Thomas Armat,  
Hutchins Building,  
Washington, D. C.

Dear Mr. Armat:

4 In reply to yours of the 23rd, I do not know that the postponement of the meeting with the Film Service Association has anything to do with the combination negotiations. Matters have been delayed by the absence of Mr. Eastman and by changes in the forms of contract suggested by Mr. Philipp, attorney for Pathe. While matters are progressing much more slowly than could be desired, we have not detected any unreasonable delay on the part of any of the parties, and we hope for a speedy settlement. I am glad to note you have arranged your affairs in a satisfactory manner, so that you can go ahead without delay.

Yours very truly,

HNM/L.

Mr. GROSVENOR: I offer in evidence letter dated 1  
November 23, 1908, addressed to Mr. H. N. Marvin,  
and signed Thos. Armat.

Paper marked Petitioner's Exhibit No. 74, and  
is as follows:

**Petitioner's Exhibit No. 74.**

**ARMAT MOTION PICTURE COMPANY.**

Owners of Patents covering all Projecting Machines in use 2  
in this Country, and also of the business of the American  
Kinetograph Co., and the N. Y. Photo-Projecting Com-  
pany, American Patents, 586,953, 673,992, 578,185,  
580,749, 588,916, 627,830, and Foreign Patents.

Cable Address: ARMAT, Washington, Hutchins Building.

A. B. C. and Lieber Code Used.

'Phone: Main 92.

Washington, D. C.,  
November 23, 1908.

Mr. H. N. Marvin,  
14 East 14th St.,  
New York, N. Y.

3

My dear Mr. Marvin:—

I notice in a recent issue of the Film Index that the Film  
Service Association Meeting has been postponed to January  
9th.

Does this delay our pending negotiations?

I have closed up matters with the estate of Col. Wood, so  
that I can go ahead promptly on any lines desired.

Yours very truly,  
(Signed) THOS. ARMAT.

4

---

Mr. GROSVENOR: I offer in evidence letter dated  
December 24, 1908, addressed to H. N. Marvin, and  
signed George F. Scull.

Paper marked Petitioner's Exhibit No. 75, and  
is as follows:

1

**Petitioner's Exhibit No. 75.**

Thomas A. Edison,  
President.

C. H. Wilson,  
General Manager.

Frank L. Dyer

A. Westee,

Vice President

Secretary and Treasurer.

and General Counsel.

**EDISON MANUFACTURING CO.**

Main Office and Factory,

2

Orange, N. J.

**EDISON PROJECTING KINETOSCOPES AND FILMS.**

(Photo of Mr. Edison.)

Trade Mark

10 Fifth Avenue, New York.

Thomas A. Edison

304 Wabash Avenue, Chicago.

Cable Address: "Kuriliam, New York."

In replying address the company, not the individual and mention these initials.

Address your reply to

3

Orange, N. J., Dec. 24, 1908.

H. N. Marvin, Esq.,

11 East 14th Street,

New York, N. Y.

**Dear Sir:—**

4

Enclosed please find rough draft of the projecting machine license which attempts to embody the conditions provided in the film licenses, and also such further conditions as were discussed by the Manufacturers at their recent meetings. Also, rough draft of the exchange license. For your guidance, there is also enclosed a copy of the old license agreement and you will see that this new one is drawn in the form of a license instead of a mere contract, this form possibly giving us a better opportunity to sue for infringement if such a necessity should arise.

Mr. Dyer is calling a meeting of the proposed projecting machine manufacturing licensees for Tuesday, December 29th, at 3 P. M. at No. 10 Fifth Avenue, and of course he



would like to have Mr. Kennedy and yourself present. He has, in addition to those film manufacturers who are also machine manufacturers, invited Mr. Baxter Morton, of the Powers Company, and Mr. A. C. Roebuck, of the Enterprise Optical Company, of Chicago. Mr. Dyer believes that these are the only ones who were mentioned at the Manufacturers' meetings, but if there are any others whom you think should be included, Mr. Dyer would be greatly obliged if you will let him know so that they can also be invited.

Yours very truly,

(Signed) George F. Scull,

Assistant to Vice-President.

GFS/ARK.

Encs.

---

Mr. GROSVENOR: I offer in evidence letter dated December 30th, 1908, addressed to H. N. Marvin, and signed G. F. Scull.

Paper marked Petitioner's Exhibit No. 76, and is as follows:

1

**Petitioner's Exhibit No. 76.**

Thomas A. Edison,	C. H. Wilson,
President.	General Manager.
Frank L. Dyer,	A. Westee,
Vice-President	Secretary and Treasurer.
and General Counsel.	

**EDISON MANUFACTURING CO.**

Main Office and Factory,

2

Orange, N. J.

**EDISON PROJECTING KINETOSCOPES AND FILMS.**

(Photo of Mr. Edison.)

Trade Mark.	10 Fifth Avenue, New York.
Thomas A. Edison.	304 Wabash Avenue, Chicago.
	Cable Address,
	"Kurilian, New York."

In replying address the company, not the individual and  
mention these initials.

3

Address your reply to

Orange, N. J., Dec. 30, 1908.

H. N. Marvin, Esq.,  
11 East 14th Street,  
New York, N. Y.

Dear Sir:—

4

By Mr. Dyer's direction I hand you herewith revised copy  
of the Machine license as it will be drawn for most of the  
Manufacturers, but not for those such as Pathe, which im-  
port. That will be taken care of in a license in which the  
word "imported" will be inserted at various points.

Mr. Dyer wishes to call attention particularly to the  
changes which have been made in paragraph 4, page 6 and 7,  
and paragraph 10, page 12.

The Pathe agreement is substantially like this and is  
being submitted to Mr. Philipp, but Mr. Dyer believes that it  
is not necessary to wait for Mr. Philipp's sanction before go-

ing ahead with this license, if it is satisfactory to you, and he would, therefore, like to have your opinion as soon as possible.

Yours very truly,

(Signed) G. F. Scull,

GFS/ARK.

Asst. to Vice-Pres.

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Mr. GROSVENOR (Addressing the witness): I return to you a telegram produced by you, dated December 29th, from Thomas Armat, and the copy of a letter addressed by you to him, dated December 28th, which I will not offer in evidence.

Mr. WILLIS: The telegram and copy of the letter which the counsel for the Government has returned were among the letters, copies, and the documents which the Government requested the defendants, the witness, Marvin, to produce.

By Mr. GROSVENOR:

Q. Mr. Marvin, do you recall testifying in the suit brought by the Motion Picture Patents Company against the Chicago Film Exchange, the testimony you gave having been given at the office of the Motion Picture Patents Company, No. 80 Fifth Avenue, New York City, on Saturday, July 9th, 1910? A. I recall testifying on that occasion.

Mr. GROSVENOR: I offer in evidence, as admissions made by the defendant, from his testimony in that case, page 180 of the record in that case, the answers to questions 13, 14 and 15.

Mr. CALDWELL: That is objected to as incompetent, and a mere statement of the witness in another proceeding, not binding upon the defendants in this action.

### **Petitioner's Exhibit No. 77.**

Q13. State whether or not your company,—the Biograph Company,—is a licensee under the Edison patent reissue



1 No. 12,192, involved in this suit. A. The Biograph Company is a licensee under that patent.

Q14. Will you give the names of other licensees under said patent, known to you to be such, engaged in the manufacture and sale of motion picture films? A. The Edison Manufacturing Co. of Orange, New Jersey; Pathe Freres, of New York; The American Vitagraph Company, of New York; the Lubin Mfg. Co., of Philadelphia; The Kalem Co., of New York; George Melies, of New York; The Essanay Company, of Chicago; the Selig Polyscope Company, of Chicago; George Kleine, of Chicago.

2 Q15. What proportion of the annual product of motion pictures films manufactured and sold in this country, is put out by the licensees of the Edison patent, in suit? A. About 90 per cent. of the films manufactured and sold in this country are put out by licensees under the Edison patent above referred to. By licensees I refer to the ten licensees above named.

By Mr. GROSVENOR:

3 Q. Mr. Marvin, before the General Film Company was formed, I think you have testified that an estimate was made of the value of the properties at the various licensed exchanges. Am I correct in that statement? A. An estimate was made of the probable value of the film in the possession of various rental exchanges throughout the country. I do not know that any estimate was made concerning any other property.

Q. And that figure amounted to about \$3,000,000? A. I don't remember what it amounted to.

Q. Who made that estimate? A. I made those estimates.

4 Q. Have you preserved the estimates you made, the original papers? A. I have not.

Q. How did you prepare the estimate? A. Well, we tried to figure the amount of the film of a commercial character, that is, in such condition that it could be used commercially, that was probably in the hands of the several rental agencies to estimate the probable average value of that film.

Q. You are referring to the stock which each rental exchange had on hand under the license agreements, each ex-

change retaining the film for six months, if it so desired, is that right? A. Approximately. 1

Q. Your estimate was made of the total amount of film on hand in the several exchanges under that provision of the license agreement? A. Yes, the probable amount.

Q. In your estimate, did you include the value of the projecting machines— A. (Interrupting.) No.

Q. (Continuing.) —which they had? A. I did not.

Q. I show you this letter of January 23rd, 1912, signed by Mr. Kennedy. Will you read that? A. (Witness examines letter.) I have read the letter.

Q. You recognize that as the signature of Mr. Kennedy? A. That appears to me to be Mr. Kennedy's signature. 2

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MR. GROSVENOR: I offer in evidence this letter, to be marked Petitioner's Exhibit No. 78, which is as follows:

**Petitioner's Exhibit No. 78.**

**GENERAL FILM COMPANY**

Fifth Avenue Building

200 Fifth Avenue

New York

January 23, 1912.

MR. WILLIAM PELZER, Secretary,  
General Film Company,  
200 FIFTH AVENUE, NEW YORK CITY.

(Signed) J. J. Kennedy,

Dear Sir:

Sometime before the General Film Company was organized, an estimate of the value of the business of exchanges leasing licensed motion pictures, was made by men familiar with the manufacture of motion pictures and also with the business of exchanges.

According to this estimate, the value of said business was

1 \$3,468,847. As nearly as can be determined, by using this estimate as the basis of computation, the value of the motion pictures owned by exchanges and sold to the General Film Company, and the unexpired right, title and interest in leased motion pictures bought by the General Film Company from exchanges, together with the furniture, fixtures and equipment of the exchanges that sold such equipment to the General Film Company, was \$3,031,566.

2 It is my impression that Mr. John Collier of the Peoples Institute, can supply information relative to the business of exchanges dealing in unlicensed motion pictures, and the investment in motion picture theatres and manufacturing plants, as, at the time the estimate of the value of licensed exchanges was made, Mr. Collier was endeavoring to obtain such information for use in showing the magnitude of the business at meetings and conventions of civic and public welfare societies and associations.

Respectfully,  
(Signed)

J. J. Kennedy,  
President.

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3 By Mr. GROSVENOR:

Q. In this letter Mr. Kennedy says: "Sometime before the General Film Company was organized, an estimate of the value of the business of exchanges leasing licensed motion pictures, was made by men familiar with the manufacture of motion pictures and also with the business of exchanges.

"According to this estimate, the value of said business was \$3,468,847."

4 Is Mr. Kennedy referring there to the same estimate as that made by you? A. I don't think so.

Q. Well, now, what estimate was made other than this that you had made prior to the formation of the General Film Company? A. I have no knowledge of any other estimate that was made other than the estimate that was made by me as to the probable value of the stock of film that the exchanges had.



Q. Do you recall what figure you reached in making that estimate? A. I do not. 1

Q. Have you any recollection at all of the matter? A. I have no definite recollection, but my impression is that it was somewhere around \$3,000,000.

Q. And that estimate you made was merely an estimate of the film that these different exchanges had on hand? A. Yes.

Q. It took no account of the good will of the several exchanges? A. No.

Q. It took no account of the value of their licenses with the Patents Company? A. No, we did not consider that the licenses had any value. 2

Q. Because they were subject to cancellation by the Patents Company? Is that the reason you considered them of no value? A. Well, I would not say that that was the reason. We never charged anything for those licenses, and so it would be difficult to fix a value for them.

Q. How were you enabled to form this estimate of the film on hand at these different exchanges? A. We knew the average amount of film that each exchange had been leasing.

Q. Whom do you mean by "we?" A. I mean it was a matter of knowledge to the Directors of the Patents Company. I knew in that way the average amount of film that the exchanges had been buying, and in making this estimate, I assumed that films that had been released more than six months, were of little or no value, and that films that had been just released, were of full value. 3

Q. Do you know how Mr. Kennedy reached the figure he gave, \$3,468,847? A. I have no idea.

Q. As a matter of fact, you purchased all of these exchanges for a figure approximating \$3,000,000? A. Whom do you mean by "we?"

Q. The General Film Company? A. I have no definite knowledge on that matter, but my understanding is that the General Film Company expended in the neighborhood of \$3,000,000 in acquiring property from exchanges, or the rights of exchanges in property. 4

Q. Have you preserved any papers showing separately the value of the film on hand by each of these rental exchanges, as determined by you, prior to the formation of the General Film Company, and made in the manner you have testified? A. I have not.

1 Q. You have preserved no papers or memoranda of any kind? A. None whatever.

Q. Didn't you prepare that memoranda or that estimate, Mr. Marvin, in order to be of assistance to you when the General Film Company was formed, in making purchases of those rental exchanges? A. No, I had no connection with the General Film Company at any time.

Q. I thought you testified yesterday that the General Film Company was organized largely because of your insistence?

2 A. That is perfectly true. I recognized the need of such an exchange, and urged the manufacturers to organize it, but when it was organized, I had no connection with it in any way at any time.

Q. Did you show to the manufacturers when you were urging them to organize it, these figures that you had prepared of the film on hand in the rental exchanges? A. I showed them figures that I had made—I showed figures that I had made, to some of them. I don't recollect that I showed them to all of them.

3 Q. What did you use these figures for? What did you make this estimate for, if it was not to be used in connection with the General Film Company's business? A. I made the estimate purposely to discover the accurate amount of capital that would be required in case the business should be so acceptable to exhibitors that it would extend all over the country.

4 Q. That is, in case the General Film Company, when it was formed, should decide to expand throughout the country, and acquire these businesses, you wanted to have information on hand as to what it would have to expend? A. I considered that this information would be desirable information as a guide in arranging to provide capital either to purchase existing stocks of films, or to purchase new stocks of films from the manufacturers.

Q. In making these purchases of these rental exchanges, you made no allowance for the values of the license agreements with the Patents Company, as I understand? A. I did not make any estimates of probable purchase prices of anything from exchanges. I merely made an estimate of the probable value of the stocks of film they had on hand.

Q. And that was in order to be of assistance in case the General Film Company should expand its business? A. To

be a guide to them in organizing in order that they might know what amount of capital it might be necessary for them to provide. 1

Q. Did not the General Film Company begin to expand as soon as it started in business? A. I think its growth was rapid from the beginning.

Q. It purchased the exchanges very rapidly? A. Quite rapidly.

Q. Was not the intent of the organizers before it was formed, that it should expand rapidly? A. I do not think they could have been said to have had a definite intent. I think that it did expand much more rapidly than any of them expected that it would expand. 2

Q. They intended it to expand and to acquire these rental exchanges before they organized it? A. They hoped that it would be successful, and if it was successful, they expected it would expand.

Q. And acquire all of these other exchanges? A. Not necessarily by acquiring exchanges. Its rapid expansion was, as I understand it, due in a large measure to the fact that very soon after it was organized, rental exchanges came to it in large numbers and desired to sell their stocks of film to it. 3

Q. Did these rental exchanges have the same idea that you have expressed, namely, that the license agreement with the Patent Company was of no value because it could be canceled at any time by the Patents Company? A. I have not said that I considered the license agreement had no value, because they could be cancelled, and how the licensed exchanges regarded the license agreements, I have no knowledge.

Q. In any event, you did not count them as assets to be taken into consideration when you were making an estimate of the value of the properties of these different exchanges? A. I made no estimate of the value of any property that they possessed other than the film. 4

Q. The net profits of the General Film Company in the year 1911, the first year it did business, aggregated over \$1,000,000, is that correct? A. I have no knowledge of that. I may have heard the figures stated, but I do not recall them.

Q. That was, for one year, over 33 per cent. of what



1 it expended to acquire these exchanges? A. Those figures, as I say, I have no knowledge of, and that would be a matter of arithmetic.

Q. The profits were very large, were they not, in proportion to the expenditure? A. Well, I am not in position to say.

Q. Do you own any common stock in the General Film Company? A. I do not.

Q. Does the Biograph Company? A. I believe the Biograph Company does.

2 Q. Do you own stock in the Biograph Company? A. I do.

Mr. GROSVENOR: I wish you would prepare, Mr. Marvin, a statement showing separately the amounts received and collected by the Motion Picture Patents Company for each of the years 1909, 1910, 1911 and 1912 as (1) film royalties; (2) exhibitors' royalties; (3) machine royalties. That statement to give these three classes of royalties separately, and also giving figures separately for each year.

3 I wish you would also prepare a statement showing the number of replevin suits instituted by the Patents Company under these license agreements since the company commenced doing business. I understand from your testimony that those suits are instituted in the names of the manufacturers. The Legal Department of the Patents Company has the supervision of those suits, has it not?

The Witness: I do not think the Legal Department of the Patents Company has supervision over those suits.

4 Mr. GROSVENOR: Well, see if you can get that information from your Legal Department.

The Witness: May I ask a question?

Mr. GROSVENOR: Certainly.

The Witness: Do you mean replevin suits brought by the Motion Picture Patents Company, or replevin suits brought by the several licensed manufacturers?

Mr. GROSVENOR: I want a list of all replevin suits brought by the Patents Company, and by the

different manufacturers. All suits of a replevin character brought upon these different agreements, whether they be on the manufacturers license agreements, or on the license exchange agreements, or the other agreements. 1

I believe, under the agreements with the Patents Company, and the assignors of the patents, the Patents Company makes a yearly report showing the amounts expended for this patent litigation. I wish you would produce copies of those statements.

I wish you would also produce a statement showing the number of licensed theatres, that is, licensed by the Patents Company, on the following dates; April 1st, 1909; January 1st, 1910; January 1st, 1911; January 1st, 1912; January 1st, 1913. I do not wish, of course, the names of the theatres. I wish simply the aggregate number. 2

Mr. CALDWELL: Mr. Scull calls my attention to the fact that the fiscal year runs to June. If June would suit you as well as January, those statements could be much more rapidly prepared.

Mr. GROSVENOR: You mean of the theatres? 3

Mr. SCULL: Of the reports that you wanted. The accounts are made up as of June 18th, I think, isn't it, Mr. Marvin?

The Witness: Yes, I think so.

Mr. SCULL: We already have those statements in that form, and to divide them into another form would be quite difficult.

Mr. GROSVENOR: That will be agreeable to me. But you can give me the number of theatres for the dates I have named?

Mr. SCULL: Yes. Our last statement would be of last June. 4

The witness, Harry N. Marvin, is excused until Tuesday, January 21st, 1913.

On Tuesday, January 21, 1913, Counsel for defendants, waived the cross examination of the witness Harry N. Marvin.

1 Thereupon, WILLIAM PELZER, the next witness subpoenaed by the Petitioner, of lawful age, duly sworn, deposed:

Direct examination by Mr. GROSVENOR:

Q. Mr. Pelzer, what is your business? A. Secretary of the Motion Picture Patents Company, and Treasurer of the General Film Company.

Q. You are an official of both companies? A. Yes, sir.

2 A. And do you have office quarters at each company?  
A. I have a desk that I occupy at each place.

Q. Have you any other connection with the motion picture patents business? A. Not unless my position as the representative of Thomas A. Edison is such.

Q. You are the representative of that company? A. Yes, sir.

Q. Where? A. In the Motion Picture Patents Company.

Q. You represent their interest with that company? A. Yes, sir.

3 Q. Do the officers of the Patents Company draw any salaries? A. No, sir, at least I do not; and I don't believe any one else does.

Q. They are paid for their services by the interests they represent? A. I don't know how the others are paid. I know I receive a salary from Thomas A. Edison, Incorporated.

Q. And that is for the work you do for the Patents Company? A. Partly.

4 Q. And is it not partly for the duties you perform down at the General Film Company? A. I don't know that it would be considered specially for those duties.

Q. Do you draw any salary as Treasurer of the General Film Company? A. No.

Q. Then you have three functions, you work for the interest of the Patents Company and for the interest of the General Film Company and for the interest of Thomas A. Edison, Incorporated? A. It may be so considered.

Q. Were you the first Secretary of the General Film Company? A. Yes, sir.

Q. Were you interested in the organization of that company? A. No, sir.

Q. You attended the first meetings of the Directors? A.



I don't remember whether I attended the first meeting, 1  
I think I attended the meeting in May, 1910.

Q. Soon after it had begun business? A. I don't think  
it had actually started business; I think that it was at  
the time of the completion of the organization of the com-  
pany.

Q. That was the first meeting at which any business was  
done. In other words, the officers were elected at that  
meeting? A. I think that is the case.

Q. You have produced the minutes of meetings of the  
Directors of the company at the request of counsel for the 2  
Government, which I am now looking over—J. A. Berst  
and William T. Rock were elected members of the executive  
committee. Who was Berst? A. Mr. Berst was identified  
with Pathe Freres and Mr. Rock with the Vitagraph Com-  
pany of America.

Q. What position did Mr. Rock have with the Vita-  
graph Company? A. I am not positive, but I think his  
position is that of President.

Q. The minutes of the meeting of May 25, 1910, state  
that the officers of the company were authorized to invite  
subscriptions to 895 shares of the common stock. To whom 3  
was the invitation extended to subscribe to the common  
stock? A. I don't know.

Q. Well, you were the Secretary of the company? A.  
No invitations were prepared by me.

Q. I said you were the Secretary of the company at  
that time? A. Yes, sir.

Q. Who did become the common stockholders? A. The  
common stockholders of record at that time or after the  
stock was issued rather, are the stockholders of today and  
are the Biograph Company, Edison Manufacturing Com-  
pany (now Thomas A. Edison, Incorporated); Kalem Com- 4  
pany, Lubin Manufacturing Company, Pathe Freres, George  
Kleine, W. N. Selig, George K. Spoor, and Vitagraph Com-  
pany of America, and Gaston Melies.

Q. No common stock has ever been held by any one who  
was not a licensed manufacturer of the Patents Company, or  
an officer of one of the licensed manufacturers? A. That is  
true.

Q. The minutes of this first meeting of the Directors  
show it was held May 25, 1910, at 80 Fifth Avenue. Was  
that the office of the Patents Company? A. Yes, sir.

1 Q. Then the officers and the Directors of the General Film Company were elected in 1910, in the offices of the Patents Company? A. The meeting was held at that office, yes.

Q. And the officers were there elected? A. Not all of them.

2 Q. Mr. Pelzer, these minutes, reading at page 4 from the minute book of this meeting, state: "On motion, duly seconded, it was voted that the Executive Committee be authorized to negotiate with the Motion Picture Patents Company for licenses to conduct Film Exchanges in any and all cities that that company may be disposed to grant licenses, or at such points as in the judgment of the Committee would be most advantageous to this company." Do you recall that resolution? A. Yes, sir.

Q. Was there any discussion on it? A. I can't remember specifically, I imagine there must have been.

Q. I read into the record from the minutes those present, as shown by the minutes of that date:

Kennedy, Dyer, Berst, Long, Rock, Kleine, and Lubin.

3 The minutes, reading on (reading):

"On motion, duly seconded, the following resolutions were unanimously adopted:

4 "Resolved that the Executive Committee be and it hereby is authorized and empowered to make preparation for and start the business of the company, through branches in the City of New York, and at such other points in the United States as in the judgment of the committee would serve the best interests of the company; and further

Resolved that the Executive Committee be and it hereby is authorized and empowered to purchase the business of any existing licensed motion picture exchange at such price and terms and to be paid for in preferred stock or money or both in such proportion as in the judgment of the committee would be a profitable investment for the company; and further

Resolved, that for the purpose of facilitating carrying on the company's business at any branches that may be established, the Executive Committee be and it

is hereby authorized and empowered to arrange for the opening of bank accounts in all cities where branches are established, and as many bank accounts in each city and for each branch as the committee may deem necessary, and to direct how deposits and withdrawals shall be made.” 1

It was the intention on that date and at the time of that meeting to open branches in a large number of cities in the United States? A. Evidently.

Q. You so understood it to be the intention of the Board of Directors at that meeting at that day? A. Judging from that resolution, but personally I had no knowledge of the situation and nothing to say in the affairs. 2

Q. And did you gather the same intention from the discussion that went on in your presence? A. Yes, sir.

Q. The intention was to enter very extensively in the rental and exchange business? A. I don't know what the intentions of the interested parties were, Mr. Grosvenor.

Q. You understood that was what the plan was?

Mr. CALDWELL: I object to that as irrelevant, incompetent and immaterial. 3

A. I understood generally the plan was to go into the exchange business.

Q. And to go into it pretty extensively?

Mr. CALDWELL: I object to that on the same grounds as last stated.

A. I suppose they expected to do that.

Q. The minutes for the same day read: 4

“The question of entering into contracts with film and projecting machine manufacturers was discussed, and on motion, duly seconded, it was voted to authorize the officers to enter into and execute such contracts as may be necessary for the proper conduct of the company's business.

On motion, duly seconded, the meeting adjourned.  
Attest

Wm. Pelzer,  
Secretary.”



1           Mr. CALDWELL: Was that the meeting of the 25th of May?

          Mr. GROSVENOR: Yes.

          Mr. CALDWELL: And what you have read was all at the same meeting?

2           Q. The minutes then refer to a special meeting on June 14, at which no quorum was present, and the meeting adjourned and then another meeting in the afternoon of the same day and the meeting adjourned, there being no quorum and then another meeting on June the 22nd, and that adjourned without a quorum, and then a meeting on June the 23rd at which were present Messrs. Kennedy, Berst, Long, Lubin, Melies, Selig, Spoor, and Pelzer, Secretary. Then at page 10 of the minutes, for that day (June 23rd), appears this statement: "The Chairman of the Executive Committee reported the purchase of the following licensed motion picture exchanges." Now, the names of the exchanges are not given but there is a statement in pencil "Insert Mr. Kennedy's list." Can you obtain that list? A. I believe you already have that list.

3           Can you obtain that list? A. I believe you already have that list.

          Q. We have a list of the total exchanges purchased but I am asking you to give me a list of the exchanges purchased by June the 23rd, 1910, that is, within a month after the General Film Company began doing business? A. I have no such list.

          Q. You do not remember how many were purchased at that date? A. I can't recall now.

4           Mr. GROSVENOR: I will ask the examiner to copy from the minute book beginning at page 3 of the minutes for June 23, 1910, being page 11 of the minute book, down to the end of the meeting on page 13.

          The minutes referred to are marked Petitioner's Exhibit No. 79, and are as follows:

### **Petitioner's Exhibit No. 79.**

          The Chairman suggested the following rule of procedure at all meetings of the Directors: In the discussion of busi-

ness matters in which a Director or Directors of this Company might be directly or indirectly concerned, such Director or Directors be requested to leave the room during such discussion, and in such case if a quorum is broken, the meeting proceed in all cases as if a quorum were present.

On motion duly seconded it was unanimously voted that the suggestion of the Chairman be adopted and that the same is hereby made a rule of procedure in all future meetings of the Board.

The Treasurer presented a preliminary report as follows:

### **Bank Statement, June 22d, 1910.**

#### **EMPIRE TRUST COMPANY.**

Total deposits to date.....	\$37,475.16
Total withdrawals to date.....	36,529.02
	<hr/>
Balance	946.14

#### **FARMERS LOAN & TRUST COMPANY.**

Total deposits to date.....	\$5,000.00
Total withdrawals to date.....	2,650.00
	<hr/>
Balance	2,350.00

The Chairman read a report from Mr. George Kleine of Chicago, regarding the negotiations for the purchase of a licensed motion picture exchange operated by Calumet Film Exchange, Chicago, Ill., and it was unanimously agreed that this matter should be left to the Executive Committee for further negotiation and final decision.

The Chairman also read a report from Mr. Kleine regarding the negotiation for the purchase of the licensed motion picture exchanges at Portland, Oregon, and Seattle, Washington, operated by the Amalgamated Film Exchange, and on motion duly seconded it was unanimously voted that Mr. Kleine be instructed to close the negotiations on the basis outlined.

The question of the deferred money payments to the Howard Moving Picture Company of Boston, on the purchase price for the motion picture exchange business of that

1 company, was brought up by the Chairman at the request of Mr. Howard of that company, and he was invited into the meeting to state his position.

Mr. Howard stated in substance that he misunderstood the nature of the money payments and that he supposed notes with interest would be given in lieu of cash. Mr. Howard also informed the Board that certain legislation had been under way in the State of Massachusetts and that his exchange and the Kleine Optical Co., of Boston, and certain exhibitors, had employed the services of an attorney to look after the interest of the moving picture business in that State, and that the attorney's fees would amount to about \$1,000.00. He suggested that in view of the fact that the efforts of this attorney would work to the benefit of the General Film Co., he and his associates should be reimbursed for this amount.

Mr. Howard thereupon left the meeting and the Board proceeded to a discussion of the questions brought up.

The Chairman pointed out in detail the purchase proposition which had been made by the Executive Committee to representatives of licensed exchanges and that this proposition was the same in each case and that it was in each case accepted as outlined by the Executive Committee and that Mr. Howard appeared to fully understand the proposition then, and that no other claim of this nature had been made.

After a full discussion, the Chairman put the question as to whether or not the company would pay interest on deferred money payments, and it was unanimously voted that no interest would be paid on such deferred money payments.

The Chairman then put the question as to whether or not the company should make any change in the amount of Preferred Stock and deferred money payments for the purchase of the Howard Exchange, and it was unanimously voted that no change should be made in that respect.

The Chairman then put the question as to whether or not there should be any change in the deferred money payments, and it was unanimously voted that no change should be made.

The question of the payment of the attorney's fees referred to by Mr. Howard was thereupon discussed and it was, on motion duly seconded, unanimously noted that this company reimburse Mr. Howard and the interested parties for the attorney's fees to the extent of \$1,000.00.



Mr. Howard was thereupon duly advised of the conclusion reached by the Board. 1

There being no further business before the Board, the meeting adjourned.

Attested,

Wm. Pelzer,  
Secretary.

President.

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By Mr. GROSVENOR: 2

Q. Referring to the discussion in the minutes regarding the purchase of the exchanges represented by Mr. Howard, the minutes state:

“The Chairman pointed out in detail the purchase proposition which had been made by the Executive Committee to representatives of licensed exchanges and that this proposition was the same in each case and that it was in each case accepted as outlined by the Executive Committee.” 3

Do you know anything about this statement that the proposition to each of the exchanges was the same? A. Nothing more than the statement made at the meeting.

Q. That is, there was a general form of proposition made to the licensed exchanges? A. I so understood it.

Q. And the proposition was put up to them to accept that or nothing? A. That I don't know anything about.

Mr. GROSVENOR: I next offer the minutes of the meeting of October 11th, 1910, minute book, pages 16, 17 and 18. 4

The minutes of the meeting of October the 11th, 1910, are marked Petitioner's Exhibit No. 80, and are as follows:

### **Petitioner's Exhibit No. 80.**

Minutes of a Regular Meeting of the Board of Directors of the General Film Company, held at 10

1 Fifth Avenue, New York City, October 11th, 1910, at 4.00 P. M.

Present, Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Selig, Smith, Spoor and Pelzer, Secretary.

Mr. Kennedy reported on behalf of the Executive Committee that the Company had purchased 39 exchanges, and made the following detailed report of conditions as of October 10, 1910:

2 Number of Licensed Exchanges in entire country, including Yale Company of St. Louis, 59.

Owned by General Film Company, 39.

Not owned by General Film Company, 20.

Percentage of Exchanges owned by General Film Co., 66%.

Percentage of business of entire country controlled by General Film Company, based on reels, 71%.

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3	Payments authorized for	Stock.	Cash.
	Exchanges owned Oct. 10th..	\$591,400	\$1,483,200
	Prices—actual — including interest amounting to \$90,500.	535,900	1,369,600
	Saving .....	55,500	113,600
	Combined saving .....		169,100

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		Stock.	Cash.
4	Total payments authorized for all Exchanges in entire country .....	\$988,800	\$2,480,000
	Price of Exchanges owned on October 10th, including interest .....	535,900	1,369,000
	Available for further purchases .....	452,900	1,111,000
	Estimated maximum value of Exchanges not owned by Company, October 10th....	212,600	532,300
	Total Saving .....	240,300	578,700

For the information of the Board, Mr. Kennedy reviewed the form of contract and bills of sale which had been prepared for execution by Exchanges purchased by this company, and pointed out the large amount of work and time required to secure the necessary detailed information to complete these papers, and which accounted for the delay in closing contracts. 1

The business situation in Canada was discussed and it was proposed that the Exchanges owned by George Kleine at St. John, N. S., Montreal, Toronto, Winnipeg, and Vancouver, B. C., and by P. L. Waters, in the same cities, be purchased on the same basis as Exchanges in the United States were purchased. Mr. Kleine being present, was invited to state the price at which he would sell out, and retired from the meeting while the proposition was under discussion. After a full discussion Mr. Kleine was recalled and the following proposition to purchase his five Canadian Exchanges was made and accepted by him: 2

The Company to take over the Exchanges on the same basis and conditions as United States Exchanges were acquired and to pay \$36,800 in preferred stock of this company and \$73,900 in deferred money payments, the purchase being conditioned upon the licensed manufacturers having agreements with Mr. Kleine for exclusive handling of film continuing the agreements with this company; payments in money to be made in installments the same as in United States purchases, and this company to assume last week film bills and pay for saleable merchandise. 3

There being no further business, the meeting on motion, duly seconded, adjourned.

Attest:

Wm. Pelzer,  
Secretary.

President.

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Q. Mr. Pelzer, this statement which I have just read gives the figures for the total payments authorized for all exchanges in the entire country as \$998,800 in stock and \$2,480,000 in cash. When was the executive committee



1    authorized to pay out that amount for all exchanges in the entire country? A. I don't know.

Q. Well, didn't you follow the business of that company definitely enough to have any opinion on that point?  
A. I did what I was called upon to do.

Q. Now, I will ask that the question be read to you.

The question was read as follows: "Q. Well, didn't you follow the business of that company definitely enough to have any opinion on that point."

2    Now, can you answer that question, that is, when was the Executive Committee authorized to pay this amount to all the exchanges in the entire country? A. I don't know.

Q. Now, as a matter of fact, was not it the intention to purchase all of the exchanges in the country when the General Film Company started business in 1910?

Mr. CALDWELL: I object to that as irrelevant, incompetent and immaterial.

A. I don't know.

3    Q. You don't know? A. No, sir.

Q. These minutes state the total payments authorized for all exchanges in the entire country, in stock \$988,800 and in cash \$2,480,000. You are the Secretary of the company? A. I was at that time.

Q. Now, what record is there in the possession of the company of that authorization? A. If it isn't in that minute book I don't know of any record.

Q. You are now the Treasurer of the General Film Company? A. Yes, sir.

4    Q. Will you before Tuesday—I shall not finish with your examination to-day—look up the records of your company and ascertain when that authorization was made and given to the Executive Committee to purchase all exchanges for the sum stated there? A. I will.

Q. Did you ever see any detailed statement showing the amount that was authorized to be paid for each of these different exchanges? A. I don't think I did. I have no recollection of it.

Q. Who had charge of the purchasing of these ex-

changes, the Executive Committee? A. I believe Mr. Kennedy was conducting negotiations. 1

Q. These minutes state that Mr. Kennedy reported on behalf of the Executive Committee. Do you recall who were the members of that Executive Committee? A. I think at that time if I remember rightly, Mr. Kennedy, Mr. Berst and Mr. Rock, I believe.

Q. You were asked to produce the minutes of the Executive Committee, have you produced them? A. I have produced copies of the minutes that are in my possession.

Q. Of the Executive Committee? A. Of the Executive Committee. 2

Q. Will you let me see them? A. Yes.

The witness produces the minutes of the Executive Committee of the General Film Company held June the 20th, 1912, and the subsequent minutes up to December, 1912.

Q. I wish you would produce the minutes for the earlier years, Mr. Pelzer? A. I know of no minutes.

Q. You know of no minutes? A. Of the Executive Committee prior to this date. 3

Q. Are there any minutes of the Executive Committee covering the period of purchases of these different exchanges? A. Not to my knowledge; none were kept by me, nor did I ever attend any meeting of the Executive Committee.

Q. Who is the Secretary of the company to-day? A. Paul G. Melies.

Q. Now, reading from Exhibit 64, being the By-Laws of the General Film Company and from Article 6, Section 9, Paragraph 1, under the heading "Executive Committee"— 4

"During the time intervening between meetings of the Board of Directors, the business of the company shall be directed by an Executive Committee.

The Executive Committee shall consist of the President of the Company who shall be Chairman, and two Directors who shall be elected members of the Executive Committee in the same manner in which the officers of the company are elected.

The Executive Committee shall exercise all the

1 powers of the Board of Directors while the Board is  
not in session; shall keep minutes of the business  
transacted at all its meetings, and shall report to the  
Board of Directors at each meeting of the Board,  
all the business that it transacted since the last  
meeting of the Board."

Mr. Pelzer, these By-laws of the General Film Company  
expressly direct that the Executive Committee shall keep  
minutes of the business transacted at all of its meetings.  
2 I wish that you would make search when you leave the  
stand for these minutes, see the Secretary of the company,  
and the President of the company. Who is the President  
now? A. Frank L. Dyer.

Q. Will you speak to him and then see these members of  
the Executive Committee in 1910, who were at different  
times Berst, Rock, and A. E. Smith, and ask them for  
copies, and be prepared when you resume the stand on  
Tuesday to produce them or explain where they are? A.  
It is not necessary to make any such search, inquiry or  
request, because I know positively there are no minutes.  
3 There never was to my knowledge a formal meeting of the  
Executive Committee.

Q. Well, you didn't belong to the Executive Committee,  
did you? A. No, sir.

Q. Please see these members of the Executive Committee  
and see what records they kept. In the minutes here I  
find that the Committee was authorized to pay a certain  
amount, quoting from page 16, of these minutes, for the  
exchanges in the entire country. Now, I want the record  
of that authorization and the papers bearing thereon, and  
you see those members of the Committee and ask them  
4 for such records as they have? A. All of their minutes  
you mean, if they have any such?

Q. Of the Executive Committee, yes.

Mr. GROSVENOR: I ask counsel for the defendants  
to produce on Tuesday, the minutes of that committee  
or the members of that committee, and I will question  
them if this witness is unprepared to answer.

Next I offer in evidence, the minutes of the meeting  
of November the 10th, 1910, which are found in  
the minute book at pages 19 and 20.



The minutes of the meeting of the General Film Company of November 10, 1910, are marked Petitioner's Exhibit No. 81, and are as follows:

### **Petitioner's Exhibit No. 81.**

Minutes of a regular meeting of the Board of Directors of the General Film Company, held at 10 Fifth Avenue, New York City, November 10th, 1910, at 3:00 P. M.

Present: Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Selig, Smith, Spoor and Pelzer, Secretary.

Also Messrs. Blackton, Marvin & Scull, representing licensed manufacturers, attended on invitation.

The minutes of the previous meeting were read and on motion, duly seconded, were approved as read.

Mr. Kennedy reported on behalf of the Executive Committee that the five Canadian Exchanges of Mr. P. L. Waters had been purchased on the same basis that the Canadian Exchanges of Mr. Kleine were purchased, at the following figures:

\$                      in Preferred Stock and \$                      in deferred money payments.

On motion, duly seconded, the action of the Executive Committee was ratified.

Mr. Kleine reported that, pursuant to instructions, the branch exchange operated at Vancouver by Mr. Waters was consolidated with the Kleine branch at Vancouver, with the result that the receipts at the latter branch, which had been approximately \$650 per week, were increased to approximately \$2,000 per week; the receipts at both branches previous to consolidation, Mr. Kleine stated, were about equal, showing an increase of about \$700, per week.

Mr. Kennedy stated that further consolidations of Canadian branches would be made as soon as practicable, and further stated that he investigated the manner in which the business of the company might best be handled in Canada, and recommended that a subsidiary company be incorporated under the laws of the Dominion of Canada.

On motion, duly seconded, and unanimously adopted, the officers of the company were authorized and directed to take the necessary steps to carry out the recommendation of Mr. Kennedy.

- 1 The question as to the advisability of entering into negotiations for a new price schedule for film exported into Canada was discussed, and on motion, duly seconded, it was agreed that the company should continue the exclusive arrangements under which Messrs. Kleine and Waters acquired film, viz: at 8 cents, plus 2½ cents royalty per foot.

- 2 The Chairman called attention to a condition which had arisen concerning the management of the company's business and to certain correspondence pertaining thereto, and after the correspondence was read to the Board, it was moved by Mr. Berst, and seconded by Mr. Kleine, that no action be taken by the Board. Carried.

On motion, duly seconded, the next regular meeting of the Board was ordered to be held on Monday, December 19th, instead of on Tuesday, the 13th of December.

There being no further business before the Board, the meeting on motion, duly seconded, adjourned.

Attest:

Wm. Pelzer,  
Secretary.

- 3 Attest:  
President.
- 

By Mr. GROSVENOR:

- Q. Mr. Pelzer, these minutes for the meeting of November 10, 1910, state: "Mr. Kennedy reported on behalf of the Executive Committee that the five Canadian exchanges of Mr. P. L. Waters had been purchased on the same basis that  
4 the Canadian exchanges of Mr. Kleine were purchased, at the following figures: \$        in preferred stock and \$        in deferred money payments." Now, will you fill in those figures? A. I can get those from the books. The figures were read at the time, I remember I didn't get them, but I was to get those later from Mr. Kennedy and it was overlooked, but the books of the company will show what the figures are.

Q. I believe I have also asked you to ascertain from the books of the company the date of all authorization to the Executive Committee to purchase all the exchanges, and you so understand? A. Yes.

Mr. GROSVENOR: I offer in evidence the minutes 1  
of the regular meeting of the Board of Directors of  
the General Film Company of December the 19th,  
1910, at pages 21, 22, and 23 of the minutes.

The minutes of the regular meeting of the Board  
of Directors of the General Film Company of Decem-  
ber 19, 1910, are marked Defendant's Exhibit 82, and  
are as follows:

### Petitioner's Exhibit No. 82.

Minutes of a regular meeting of the Board of Directors of 2  
the General Film Company, held at 80 Fifth Avenue, New  
York City, December 19, 1910, at 3.00 P. M.

Present: Messrs. Kennedy, Berst, Dyer, Kleine, Long,  
Lubin, Selig, Spoor, and Pelzer, Secretary. Also Messrs.  
Blackton, Marion, Marvin, Paul Melies, Rock, Scull and  
Singhi.

All the directors present agreed to hold the meeting at  
80 Fifth Avenue instead of at 10 Fifth Avenue, and the meet-  
ing was called to order and held at 80 Fifth Avenue.

Mr. Kennedy reported that since the last meeting, nego- 3  
tiations for the purchase of the following exchanges were  
closed and the business of said exchanges acquired by this  
company: S. Nye Bass, New Orleans, La; Imported Film &  
Supply Co., New Orleans, La; Magnetic Film Service Co.,  
Cincinnati, Ohio; Moore's Film Exchange, Washington D.  
C., and Ohio Film Service, Columbus, Ohio.

Mr. Kennedy also made the following report of the extent  
of the company's business.

Percentage of business of the country based on reels released during the week ending September 17, 1910, assuming that none of the business of ex- 4	
changes which discontinued as licensed ex- changes was obtained by General Film Com- pany .....	78.3
Total number of licensed exchanges when General Film Company commenced business.....	69
New Exchange at St. Louis.....	1 70
Exchanges operated by General Film Company.....	46
Exchanges Licenses cancelled.....	9
Not operated by General Film Company.....	15 70



- 1 Percentages of Licensed Exchanges operated by General Film Company ..... 75.4

Attention was called to the necessity of providing a suitable projecting room in the city of Chicago for the exhibition of new pictures for censoring by the local Censor Board of that City, and on motion, it was unanimously agreed that the projecting room at the Spoor branch be placed at the disposal of the licensed manufacturers and importers for this purpose.

- 2 The question of making new arrangements with Pathe Freres for the purpose of motion pictures for use in Canada was discussed, and Mr. Berst on behalf of Pathe Freres submitted a tentative proposition based on five prints of four releases weekly. Mr. Berst retired from the meeting while the proposition was under discussion. After fully discussing the matter, it was moved that the proposition be not accepted and that the arrangements heretofore existing between Pathe Freres and the Canadian exchanges acquired by this company for the supply of motion pictures be continued, if possible. Motion carried unanimously and Mr. Berst was recalled and informed of this action.

- 3 In order to facilitate the carrying out of the authority given at the previous meeting of the Board regarding the Canadian business, it was moved that the President be empowered to sell the Canadian business acquired from George Kleine and P. L. Waters to a responsible party at a price which will cover the cost of said business to this company, plus a cash commission of not less than \$5000.00. Carried unanimously.

- 4 In view of the date for the annual meeting of the company being January 17th, 1911, it was on motion unanimously agreed that the next meeting of the Board be held on January 16th, 1911.

There being no further business, the meeting adjourned.

Attest:

Wm. Pelzer,  
Secretary.

President.

By Mr. GROSVENOR:

1

Q. The minutes of this date show that the meeting was held at 80 Fifth Avenue, New York City. Those were the offices of the Motion Picture Patents Company? A. Yes, sir.

Q. And the meeting was held in the offices of that company in that building? A. Yes, sir, in one of the rooms of the company.

Q. That is of the Patents Company? A. Yes, sir.

Q. Mr. Kennedy reported the purchase of five or six exchanges and then made the following report:

2

“Percentage of business of the country based on reels released during the week ending September 17, 1910, assuming that none of the business of exchanges which discontinued as licensed exchanges was obtained by General Film Company.....	78.3
Total number of licensed exchanges when General Film Company commenced business..	69
New exchange at St. Louis.....	1 70
Exchanges operated by General Film Company	46
Exchanges licensed cancelled.....	9
Not operated by General Film Company.....	15 70

3

The General Film Company was extended very rapidly in the year 1910? A. Apparently.

Q. That was in accordance with the plan, as you understood it, adopted in the beginning, that is, when it first commenced operations? A. I don't know anything of the plan.

Q. Do you mean to say that you were Secretary of the company and didn't have any idea of what it was intending to do? A. My position as Secretary is purely clerical.

4

Q. I will ask the Examiner to read you the question.

The question was read to the witness as follows:

“Q. Do you mean to say that you were Secretary of the company and didn't have any idea of what it was intending to do?”

Now, can you give a definite answer to that question?

Mr. CALDWELL: I object to the question as irrele-

1            vant, incompetent, and immaterial, and because the  
witness has already stated that he is merely the Sec-  
retary of this company and not a Director.

By Mr. GROSVENOR:

Q. Please read the question again.

The question was read as follows:

2            “Q. Do you mean to say that you were Secretary of  
the Company and didn’t have any idea of what it was  
intending to do?”

A. It was not my business, I was not interested, and I  
was not a stockholder, and I considered my position as purely  
clerical and wrote out the minutes as directed.

Q. Were you present at the meetings? A. Yes, sir.

Q. You heard the discussions? A. Yes.

Q. Now, please read the question again, and Mr. Pelzer,  
see if you can give a more definite answer.

The question was again read as follows:

3            “Q. Do you mean to say that you were Secretary  
of the company and didn’t have any idea of what it  
was intending to do?”

I will change that question. Do you mean to say that  
you attended these meetings of the Directors and were pres-  
ent at the discussions, and did not get any idea of what  
it was intending to do? A. I knew that the company was  
planning to go into the exchange business.

4            Q. And to do so very rapidly? A. And to do so exten-  
sively, I should say.

Q. And that was the intention of the company from the  
start?

Mr. CALDWELL: Objected to as irrelevant, imma-  
terial and incompetent.

A. Naturally from the idea I had of the business, but  
what the intentions of the interested parties were I don’t  
know.

Q. You did gather that the plan was from the beginning



to get all of the rental exchange business or the licensed exchanges? 1

Mr. CALDWELL: I object to that question for the reason last stated.

A. I don't know that, or rather didn't know it; don't know it, and didn't know it.

Q. Well, can you state what was the plan as you understood it in the beginning of 1910? A. The only thing I knew as to the plans was that they were going into the exchange business. 2

Q. All over the country? A. I was not told that. I gathered that from the procedure afterwards that they were going into it all over the country.

Q. Didn't they say so at this meeting, didn't any of them say so at this meeting at which you were present? A. I do not recall any such specific discussion.

Q. What other subjects were discussed at these meetings other than the purchase of these rental exchanges?

Mr. CALDWELL: I object to that question on the same grounds heretofore stated. 3

A. I cannot recall any specific discussion extending over this long time.

Q. Does the General Film Company do business in projecting machines? A. They sell projecting machines, yes.

Q. What else do they sell besides projecting machines and film? A. The supplies that enter into the business generally.

Q. What were the net profits of the General Film Company for the year 1910? A. I cannot state.

Q. For the year 1911? A. I cannot state. 4

Q. Are you the Treasurer of the company? A. Yes.

Q. Can't you give any idea of it? A. I became Treasurer of the company the middle of December.

Q. You have been Secretary of the company all this time? A. But I never had access to its books, that is, its books of account.

1 Q. What were the net profits for the year 1912? A. The books have not been closed yet.

Q. Are they being made up? A. Yes, sir.

Q. Now, will you please produce on Tuesday a statement showing the net profits of the General Film Company for the years, 1910, 1911 and 1912? A. I will try to.

Mr. GROSVENOR: I offer the minutes of the regular meeting of January the 16th, 1911, of the General Film Company, at pages 24, 25 and 26, of the minute book.

2 Thereupon, the minutes of the Board of Directors' meeting of January 16, 1911, were marked Defendant's Exhibit No. 83, and are as follows:

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### **Petitioner's Exhibit No. 83.**

Minutes of a Regular Meeting of the Board of Directors of the General Film Company, held at 80 Fifth Avenue, New York City, January 16th, 1911, at 4:00 P. M.

3 Present, Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Selig, Spoor and Pelzer, Secretary. Also Messrs. Blackton, Marvin, Paul Melies and Rock.

All the Directors present agreed to hold the meeting at 80 Fifth Avenue instead of 10 Fifth Avenue, and the meeting was called to order and held at 80 Fifth Avenue.

Minutes of the previous meeting were read and approved.

Mr. Kennedy reported that since the last meeting negotiations for the purchase of Kent Film Exchange were closed and the business of that exchange acquired by this company.

4 Mr. Kennedy also made the following report of the company's obligations arising out of the purchase of exchanges:

Approximate summary of prices, interest and seven per cent. stock included in contracts under which exchanges owned on January 14, 1911, by General Film Company were bought; (This summary does not include amount of last week's film bill, nor merchandise).

	Cash to be paid in installments	Interest	7% Stock
	\$1,600,300.00	\$100,853.00	\$646,200.00
Original Estimate of value of ex- changes not bought but still licensed	351,300.00		140,100.00
	<hr/> \$1,951,600.00	<hr/> \$100,853.00	<hr/> \$786,300.00

Approximate average annual charges at present, Jan. 14, 1911. 2

Installments on a/c exchanges bought	\$318,500.00
Average Annual Interest	23,400.00
7% Dividend on \$646,200.00 preferred stock	45,234.00
	<hr/> \$387,134.00

In view of the obligations of the company (actual and probable) as summarized in the foregoing report, Mr. Kennedy suggested the advisability of reducing the authorized issue of common and preferred stock and after discussion, it was on the affirmative vote of all Directors present 3

Resolved, that the Board of Directors recommend to the stockholders of the company that the total authorized issue of capital stock be reduced to one million dollars (\$1,000,000.00) divided into ten thousand shares, each of the par value of one hundred dollars (\$100.00), eight thousand (8,000) shares to be preferred stock and two thousand (2,000) shares to be common stock.

Mr. Kennedy called attention to the change in the purchase contract with P. L. Waters for his New York Exchange making the date of transfer October 3, 1910, instead of June 6, 1910, and on motion unanimously adopted, this action was approved and ratified. 4

The Treasurer called attention to the inconvenience caused by maintaining the special deposit with the Farmers Loan & Trust Company and on the affirmative vote of all Directors present it was

Resolved, that the Treasurer be and hereby is authorized to close the special deposit account with the Farmers Loan & Trust Company at his discretion.



1 Mr. Kennedy called attention to a promise made to Mr. Howard that this company would reimburse him for expenses incurred in looking after the interests of exhibitors in the State of Massachusetts and on motion, unanimously adopted, the Treasurer was authorized to pay Mr. Howard the sum of \$100.00  
Attest,

Wm. Pelzer,  
Secretary.

President

2

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By Mr. GROSVENOR:

Q. Mr. Pelzer, these minutes contain these words—there is a summary of what has been spent—then these words: “Original estimate of value of exchanges not bought but still licensed \$351,300.” Now, what was that original estimate of value of exchanges? A. I don’t know anything about it.

Q. Do you know when it was made? A. No, sir.

3 Q. Did you ever see it? A. I don’t think I did.

Q. You wrote these minutes, didn’t you? A. Yes.

Q. You understood that such original estimate of the value of different exchanges had been made? A. Nothing more than contained in the memorandum of the figures that were handed me at the time.

Q. Will you look up the records of your company and produce on Tuesday that original estimate of the value of exchanges referred to in these minutes? A. I will try to.

Q. Or a copy of it? A. Yes.

Q. Or explain where it is? A. Yes.

4 Q. There are definite references to the different figures here throughout these minutes, so that it is apparent that there are original estimates giving separate values of the different exchanges, and if you have any doubt as to what is called for by me please take these minutes with you, the Examiner will be through with them to-day, and look through the record and read your testimony of to-day? A. Yes.

Q. The last meeting with respect to which I have been asking you questions was at 80 Fifth Avenue. You do remember of meetings in the years 1910 and 1911, at the offices

of the Patents Company? It was quite common to meet there, was it not, about that time? A. We met there occasionally; I would not say that it was quite common. 1

Q. And the minutes for February 14, 1911, show that the meeting was also at 80 Fifth Avenue, and the minutes of March 13, 1911, were also at the offices of the Patents Company, 80 Fifth Avenue? A. Yes.

Mr. GROSVENOR: I now offer in evidence the entire minutes of the meeting of March the 13th, 1911, of the Directors of the General Film Company found at pages 31, 32, 33 and 34 of the minute book. 2

The minutes of the meeting of the Board of Directors of the General Film Company of March 13, 1911, are marked Petitioner's Exhibit 84.

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### **Petitioner's Exhibit No. 84.**

Minutes of a regular meeting of the Board of Directors of the General Film Company, held at 80 Fifth Avenue, New York City, March 13, 1911, at 2.00 P. M. 3

Present, Messrs. Kennedy, Berst, Dyer, Kleine, Long, Lubin, Smith, Spoor and Pelzer, Secretary. Also Messrs. Marion, Marvin, Paul, Melies and Rock.

All the directors present agreed to hold the meeting at 80 Fifth Avenue, instead of at 10 Fifth Avenue, and the meeting was called to order and held at 80 Fifth Avenue.

Minutes of the previous meeting were read and approved.

The Chairman reported that in a suit for damages brought by the Imperial Film Exchange and in which this company is made a party defendant an answer had been prepared for all defendants and that an amended answer for this company was in course of preparation setting up a separate and complete defense. 4

The Chairman reported on behalf of the Executive Committee that since the last meeting of the Board of Directors negotiations for the purchase of the following exchanges were closed:

1	Tally's Film Exchange, Los Angeles Cal.	
	Cash in deferred payments.....	\$30,000.00
	Preferred stock .....	14,000.00
		<hr/>
		\$44,000.00
	Clune Film Exchange, Los Angeles, Cal.	
	Cash in deferred payments.....	\$40,000.00
	Preferred stock .....	20,000.00
		<hr/>
		\$60,000.00

- 2 The following statement of licensed exchanges in the United States was submitted for the information of the Board:

March 13, 1911.

Total number of licensed exchanges when General Film Company commenced business, June 6, 1910, 69.

Number of exchange licenses cancelled since June 6, 1910, 11.

Total exchanges whose licenses were not cancelled, 58.

- 3 Number of licensed exchanges purchased by General Film Company before March 13, 1911, 48.

Number of unlicensed exchanges purchased, 1.

Number of exchanges established by General Film Company, 3.

Number of exchanges purchased and exchanges established, 52.

Number of exchanges consolidated by Company with other exchanges that it owns, 12.

Number of exchanges operated by Company, 39.

- 4 Number of exchanges that have been purchased by company but which have not been delivered to it on March 13, 1911, (Clune Film Exchange), 1.

Percentage of licensed exchanges purchased and exchanges established by Company, not including new exchange in Chicago, and not including one unlicensed exchange that it purchased, 83 1/3 %.

Licensed exchanges not purchased by company:

Greater New York Film Rental Company, N. Y. City.



H. Lieber Company, Indianapolis, Ind.

1

Montana Film Exchange, Butte, Mont.

Novelty Moving Picture Co., San Francisco, Cal.

People's Film Exchange, N. Y. City.

Spokane Film Exchange, Spokane, Wash.

Turner & Dahnken, San Francisco, Cal.

Twin City Calcium and Stereopticon Co., Minneapolis, Minn.

J. D. Wheelan Film Company, Houston, Texas.

J. D. Wheelan Film Company, Dallas, Texas.

Total, 10.

The Treasurer submitted the following report, which on motion, duly seconded, was accepted:

2

(Copy report)

On motion, duly seconded, the following resolution was unanimously adopted:

Resolved, that the officers of the company be and they hereby are authorized and directed to pay out of the accrued profits for the calendar year, 1910, the following dividends to stockholders of record on March 15, 1911:

A dividend of seven per cent. for the calendar year, 1910, on the preferred stock issued for cash and on authorized issues for payments on account of property purchasers.

3

A dividend of twelve per cent. for the calendar year, 1910, on the common stock issued; and

Dividend notes to manufacturers for the remaining undivided profits.

The Chairman read a communication from Mr. Waters, tendering his resignation as General Manager to take effect on May 8, 1911, and stated on behalf of the Executive Committee that the resignation had been accepted.

On motion, duly seconded, the action of the Executive Committee was ratified and the resignation of Mr. Waters accepted with regret.

4

Mr. Kennedy presented his resignation as President and as a Director of the Company and requested the Vice-President to take the chair.

Mr. Kennedy retired and the meeting proceeded with the Vice-President in the chair.

The resignation of Mr. Kennedy was taken up for discussion, and it being the sense of the Board that the services

1 of Mr. Kennedy were of great value to the Company, it was moved by Dr. Dyer, and duly seconded, that action on the resignation be suspended and that the chair appoint a committee to wait on Mr. Kennedy.

The Chairman appointed Messrs. Dyer, Lubin and Long as the committee to wait on Mr. Kennedy, but upon the suggestion of Mr. Long, and with the approval of the Board, Mr. Kleine took the place of Mr. Long.

2 It was moved by Mr. Dyer, seconded by Mr. Spoor, that the Company pay Mr. Kennedy as salary for his services during the period ending December 31, 1910, the sum of \$25,000, to be paid out of the receipts for the year 1911. Carried unanimously.

The Committee reported that they had been unable to communicate with Mr. Kennedy, and it was moved and duly seconded, that the Committee wait on Mr. Kennedy at his office, and that the meeting therefore adjourn until 10 A. M., March 14, 1911, at 80 Fifth Avenue. Carried.

Attest:

Wm. Pelzer,  
Secretary.

3 President.

---

By Mr. GROSVENOR:

Q. These minutes contain a summary of the licensed exchanges submitted for the information of the Board and then enumerates 10 exchanges not yet acquired.

4 Did the Film Company subsequently acquire all of those ten enumerated there, except the one first named, the Greater New York Film Rental Company? A. I think they did, as near as I can remember the names.

Q. Then that summary printed on that page is a complete record of all the licensed exchanges and what was done with them? A. I could not say that.

Q. Now, on the same page there is this statement: "The Treasurer submitted the following report which on motion duly seconded was accepted." That report does not appear in the minutes. Will you please produce that report? A. What date is that?

Q. Dated March 13, 1911. You had better read over your testimony when the examiner has written it out, Mr. Pelzer? 1  
A. Yes.

Q. The minutes for this date, March 13, 1911, authorize the payment of dividends. How long had this company been doing business on March 15, 1911? A. March 15, 1911?

Q. Yes. A. Do you mean actual commercial work or since the date of its organization?

Q. Well, in actual commercial work, how long had the company been engaged in business? A. I should say about 10 months, as near as I can remember.

Q. And these dividends are, a dividend of 7 per cent. for 2  
the calendar year, 1910, on the preferred stock issued for cash and on authorized issues for payments on account of property purchased. Second, a dividend of 12 per cent., for the calendar year, 1910, on the common stock issued. You have testified that all the common stock was owned by the Patents Company's licensees, the manufacturers? A. I said—I would not call them all Patent Company's licensees, strictly in that sense, some of them were individuals and the individuals are not licensees.

Q. But they are officers of the Patents Company's licensees? A. Yes. 3

Q. And third, dividend notes to manufacturers for the remaining undivided profits. The manufacturers referred to are the Patents Company's licensees? A. Yes, sir.

Q. I wish you would on Tuesday produce a statement of the dividends that have been paid by the General Film Company since it began doing business and show separately the dividends on the preferred stock, on the common stock, and such dividends as were given in the way of dividend notes to manufacturers, showing total amounts paid as well as the rate? A. Yes. 4

Mr. GROSVENOR: I offer the minutes of the meeting of March the 15th, 1911, of the Board of Directors of the General Film Company, held at the office of the Patents Company, and which are at pages 39, 40 and 41 of the minute book.

(The minutes referred to were marked Petitioner's Exhibit No. 85, and are as follows:)



**Petitioner's Exhibit No. 85.****MINUTES OF THE MEETING OF THE BOARD OF  
DIRECTORS OF THE GENERAL FILM COMPANY.**

Held at No. 80 Fifth Avenue, New York City, New York,  
on Wednesday, the 15th day of March, 1911, at the hour of  
1 o'clock P. M.

Present: J. J. Kennedy, Sigismund Lubin, Albert Smith,  
George Kleine, George Spoor, Samuel Long, J. A. Berst;  
(also H. N. Marvin and Paul Melies).

A majority of the directors being present, Mr. J. J. Ken-  
nedy called the meeting to order and took the chair, Mr.  
J. A. Berst acting as Secretary of the meeting.

Mr. J. J. Kennedy gave notice to the Board of Waiver  
for this meeting from Wm. N. Selig, Gaston Melies and F.  
L. Dyer.

On motion duly made, seconded and carried, the Board  
proceeded to the election of officers. Seven votes were cast,  
all for the following named persons who were thereupon  
declared to be elected to the following offices:

President, J. J. Kennedy;  
Vice-President, George Kleine;  
Treasurer, J. A. Berst.

On motion duly made, seconded and carried, the Board  
proceeded to the election of a Secretary. Seven votes were  
cast, all for Mr. Wm Pelzer, who was thereupon declared to  
be elected Secretary.

On motion duly made, seconded and carried, the Board  
proceeded to the election of two members of the Executive  
Committee. Seven votes were cast, all for the following  
named persons, who were thereupon declared to be elected  
members of the Executive Committee:

Albert Smith, J. A. Berst.

On motion duly made, seconded and carried, the Board  
proceeded to the appointment of the auditing Committee.  
Seven votes were cast, all for the following named persons,  
who were thereupon appointed to act as the auditing com-  
mittee for the ensuing year.

Samuel Long, George K. Spoor.

On motion duly made, seconded and carried, the Board  
adjourned. 1

Attest:

J. A. Berst (Signed)  
Secretary pro tem.

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Mr. GROSVENOR: From the minutes of April the  
18th, 1911, of the Board of Directors of the General  
Film Company, held at 80 Fifth Avenue, New York,  
I offer these minutes in evidence. 2

(The minutes referred to, found at pages 42 and  
43 of the minute book, are marked Petitioner's Exhibit  
No. 86, and are as follows:)

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### **Petitioner's Exhibit No. 86.**

Minutes of an adjourned meeting of the Board of Direct-  
ors of the General Film Company held at 80 Fifth Avenue,  
New York City, April 18th, 1911, at 2:00 P. M. 3

Present: Messrs. Kennedy, Berst, Dyer, Kleine, Long,  
Lubin, Selig, Smith, Spoor and Pelzer, Secretary.

Also Messrs. Blackton, Marvin, Paul Melies and Singli.

The minutes of the previous meeting were read and ap-  
proved.

Mr. Kennedy made a general report on the business of  
the Company since the last meeting.

On behalf of the Executive Committee, Mr. Kennedy re-  
ported that the Mitchell Film Exchange, whose business was  
purchased by this company, had been paid the full amount  
of the cash portion of the purchase price, and on motion,  
duly seconded, the action of the Executive Committee was  
approved. 4

On motion, duly seconded, the President was authorized  
to engage Mrs. Ruth Dolese for the Educational Film De-  
partment at a salary of \$60.00 per week.

After a general discussion of the question of additional  
branch exchanges, the officers were authorized to make ar-  
rangements for the opening of branch exchanges at Milwau-

- 1 kee, Wis., and Indianapolis, Ind., and an Auxiliary branch at Jacksonville, Florida.

The President called attention to the conditions of the film rental business in the state of Texas and advocated the opening of one or more branch exchanges in that state.

On motion, duly seconded, the officers of the company were authorized to organize a local company under the laws of the State of Texas with a capital stock not over \$20,000, to conduct one or more film exchanges in that State, and to take such further action as may be necessary to start the business of such local company.

- 2 There being no further business, the meeting on motion, duly seconded, adjourned.

Attest:

Wm. Pelzer,  
Secretary.

President.

- 
- 3 By Mr. GROSVENOR:

Q. Those minutes state that Mr. Kennedy made a general report on the business of the company since the last meeting. I wish you would produce Mr. Pelzer, a copy of that report? A. My recollection is that that was a general verbal statement of the business situation. I think you will find that at a number of meetings the same statement is made that is, he would make verbal reports.

- 4 Q. Will you look up and see what reports have been made by the Executive Committee of the Board of Directors during those years? A. Written reports?

Q. Yes, written reports, and produce those also on Tuesday—any reports made by the Executive Committee to the Board of Directors? A. I do not recall any, and I might say right now, that I do not recall any written reports, other than upon the figures you have been reading.

Q. Please produce all such reports, they may not all be copied here. I want the original report. A. Yes, sir.

Q. Also any individual reports that may have been



made by Mr. Kennedy as President of his purchases of these rental exchanges? A. I may say Mr. Grosvenor, that anything handed to me in the shape of a written report was embodied in the minutes. 1

Q. I have pointed out to you several places in these minutes where blanks have been left, where the reports have not been copied? A. Yes, I have that particular instance in mind.

Q. And which indicates in some cases at least, that there were omissions? A. Yes.

Q. The minutes show that the minutes of the Board of Directors of May 15, 1911, for June 12, 1911, and for July 17, 1911, were held at the offices of the Patents Company? A. Yes. 2

Mr. GROSVENOR: I offer the minutes of the meeting of August 14, 1911, of the General Film Company, found at pages 48 and 49 of the minute book.

The minutes of the meeting of August 14, 1911, of the Board of Directors of the General Film Company are marked Petitioner's Exhibit No. 87, and are as follows: 3

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### **Petitioner's Exhibit No. 87.**

Minutes of an adjourned meeting of the Board of Directors of General Film Company, held at No. 200 Fifth Avenue, New York City, August 14, 1911, at 2 P. M.

Present: Messrs. Kennedy, Dyer, Kleine, Long, Lubin, Selig, Smith, Spoor and Pelzer, Secretary; also Messrs. Marvin and Paul Melies. 4

The meeting was called to order at No. 80 Fifth Avenue and on motion, duly seconded, the meeting adjourned to the new office of the company at No. 200 Fifth Avenue.

After inspection of the new office, the meeting was resumed.

Mr. Kennedy made a general report on the business of the company since the directors' meeting held in the month of May, and also reported the purchase of the J. D. Wheelan Film Exchange, Dallas, Texas, and the H. Lieber Company, Indianapolis, Ind. He also stated that nego-

1     tations for the Turner & Dahnken Exchange, San Francisco, Calif. were closed, and that the proprietors had agreed to sell their business to this company.

2     Mr. Kennedy also made a general statement of the work accomplished by the various branch managers and stated that where good results had been obtained the salaries of managers were increased. In this connection Mr. Kennedy also suggested that the salary of the General Manager be increased to \$300.00 per week, and on motion, duly seconded, and on the affirmative vote of each director present, the salary of the General Manager was increased to \$300.00 per week, the same to take effect immediately.

There being no further business before the meeting an adjournment was taken until Monday, September 11th, 1911, 2 P. M., at No. 80 Fifth Avenue.

Attest:

Wm. Pelzer,  
Secretary.

President.

3

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Mr. WILLIS: You have given notice to the counsel for the defendants to produce at the next sitting on Tuesday, the members of the Executive Committee of the General Film Company, together with such memoranda or minutes that may be in existence having reference to their business conduct as such Executive Committee.

4

Representing Mr. Kennedy, we will be very glad to comply with that notice provided that it shall have the same effect as though you had a regular subpoena *duces tecum* issued and served upon him.

With that understanding we shall make every effort to give you every facility in that report.

Mr. GROSVENOR: Mr. Pelzer, you understand that my request of you to produce these papers is addressed to you in your capacity as Treasurer of the company, and you are to direct the Secretary of the company to facilitate you in the search for these papers and documents; and you are to direct

the Secretary of the company to go and see the other  
 officers of the company and the Executive Com-  
 mittee of the company to get those papers, and then  
 the papers are to be produced by the General Film  
 Company and such officers as produce them will  
 produce them as officers of the General Film Com-  
 pany and not as individuals. I do not agree with  
 counsel for the defendants. These documents are  
 called for as being papers of the corporation and  
 belonging to the corporation, and not to the indi-  
 viduals, and I shall hold the officers responsible to  
 produce them under the decision in the Wilson case,  
 to which I refer counsel in order that they may look  
 up that decision in 221 United States. 1 2

Mr. WILLIS: All right, sir.

Mr. CALDWELL: Mr. Berst is the only member  
 of that committee for whom I have appeared here.

Mr. GROSVENOR: I understand that counsel hav-  
 ing notice of the hearings also have notice of what  
 transpires at the hearings.

Mr. CALDWELL: I can have Mr. Berst here, I  
 cannot have the others. I have no control over Mr.  
 Kennedy. 3

Mr. GROSVENOR: Counsel understands, I hope,  
 that what I want are the papers, not the individuals.

Mr. CALDWELL: What you have asked for are  
 the individuals.

Mr. GROSVENOR: I want these papers brought  
 here, and I want the individuals here in case the  
 proper officers do not produce them in order that  
 if I see fit I may cross examine them.

Mr. CALDWELL: I want you to understand that  
 I have no control over any of these gentlemen ex-  
 cept Mr. Berst. Mr. Berst will come if I tell him  
 to; I can't tell Mr. Kennedy to come. 4

Mr. GROSVENOR: Mr. Willis has answered for  
 Mr. Kennedy.

Thereupon at 12:30 o'clock P. M., on this January the  
 17th, 1913, the hearing was adjourned until Tuesday morn-  
 ing, until 10:30 o'clock, January 21st, 1913.



1

IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

2

UNITED STATES OF AMERICA,  <div style="text-align: right;">Petitioner,</div> <div style="text-align: center;"><i>v.</i></div>	}	No. 889 Sept. Sess., 1912.
MOTION PICTURE PATENTS CO., and others,  <div style="text-align: right;">Defendants.             </div>	}	

New York City, January 21st, 1913.

The hearing set for 10:30 o'clock A. M., was by consent of counsel adjourned until 2:30 o'clock P. M., on this January 21st, 1913.

The hearing was resumed pursuant to adjournment at 2:30 o'clock P. M., on this January 21st, 1913, at Hotel McAlpin, New York City.

3

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.

4

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig.

JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Thereupon WILLIAM H. SWANSON, the next witness subpœnaed by Petitioner, of lawful age, duly sworn, deposed: 1

Direct examination by Mr. GROSVENOR:

Q. Mr. Swanson, what is your present occupation? A. I am in the manufacturing, renting and exhibiting of motion pictures.

Q. How long have you been engaged in some branch of the motion picture business? A. Since 1896.

Q. 1896 or 1906? A. 1896. 2

Q. What was your business then, I mean with what branch of the art were you connected? A. Traveling exhibitor.

Q. Did you subsequently organize or establish film exchanges? A. Yes, sir, in Chicago.

Q. What was the name of the company? A. William H. Swanson & Company.

Q. That company was engaged in the general business of renting films or selling films to the exhibitors, and in supplying them with branch articles, and such other articles as were necessary? A. Yes, sir. 3

Q. Did you after that establish other rental exchanges? A. Yes, sir. I established exchanges in New Orleans, Kansas City, Omaha and St. Louis.

Q. Doing the same sort of business? A. Yes, sir.

Q. Did you continue to carry on that business until the early part of 1909? A. Yes, sir.

Mr. MACDONALD: I would like to enter the appearance of Macdonald & Bostwick by Dwight Macdonald, counsel for Mr. Rowland, a preferred stockholder. 4

Mr. GROSVENOR: Of the General Film Company?

Mr. MACDONALD: Yes.

Mr. CALDWELL: Counsel for the General Film Company states that the preferred stockholders of the General Film Company are not parties in this proceeding, and objection is made to any appearance being entered in their behalf.

Mr. GROSVENOR: Counsel for the Government has no objection to the appearance just entered.

1 By Mr. GROSVENOR:

Q. Mr. Swanson, from what manufacturers were you obtaining your supplies in the motion picture film business during those years? A. From the Edison Manufacturing Company; Lubin Film Company; Selig Polyscope Company; Essanay Manufacturing Company; Kalem Company; Melies Company; George Kleine, Pathe Freres and perhaps some other importers that I do not recall—Williams, Brown & Earle.

2 Q. Have you named the Vitagraph Company? A. No, I didn't name them but I was getting film from them.

Q. And the Biograph also? A. Yes, sir.

Q. In those years was there competition in the supplying of those films?

Mr. CALDWELL: I object to the question as calling for a conclusion.

A. Very keen.

3 Q. And were the prices of those different manufacturers up to the end of 1907, different from time to time, or were they always the same? A. 1907?

Q. Yes, down to the end of 1907. A. Do you have reference to their own prices, or as compared to competitors'?

Q. Did all of those eight or nine or ten manufacturers sell their films to your exchanges at the same price?

A. Oh, no, there was great variation in prices.

Q. Did any of the manufacturers during those years sell these motion picture films to you as patented articles?

4 Mr. CALDWELL: Objected to as irrelevant, incompetent and immaterial.

A. Not until 1909.

Q. That is, not until 1909, were they sold as patented articles?

Mr. CALDWELL: I object to the question because irrelevant, incompetent and immaterial.

A. They never were so sold until the formation of the Motion Picture Patents Company.



Q. Did you receive any notice during those years from any of the manufacturers whom you have named of motion picture films that the other manufacturers were selling the films in infringement of their rights? 1

Mr. CALDWELL: Objected to as calling for the contents of written instruments without the production of the instrument.

A. We never received any notice of that character of any sort.

Q. During the same period were you buying projecting machines from a number of manufacturers? A. Yes, sir. 2

Q. Please name the manufacturers of projecting machines, to the best of your recollection, from whom you bought such machines in those years.

Mr. WILLIS: What years were those?

Q. (Continuing): That is from 1906 down to 1909? A. I purchased machines from Sears, Roebuck & Company, Motiograph Company, Edison Manufacturing Company, Viascope Company, Selig Polyscope Company, and Nicholas Power Company. 3

Q. And S. Lubin? A. S. Lubin, yes, sir.

Q. During the years I have named were those machines sold to you outright, that is to say, without any conditions attached thereto? A. No conditions whatever.

Q. Were attached to the sales? A. No.

Q. By any of those manufacturers? A. Not by a single one.

Q. Then you resold those projecting machines to exhibitors, your exhibitors, throughout the United States? A. Yes, sir. 4

Q. And in the same way without any condition being attached thereto? A. Without any condition of any kind.

Q. State whether or not you had sold some thousands of such machines in the years you were in business? A. I could not say as to thousands, but I could say a great many hundreds of them.

Q. In the Spring of 1909, you had five branch exchanges. Were you running five rental exchanges? A. I was run-

1   ning four at that time; I had one closed up by orders of Mr. Dyer prior to that time.

Mr. CALDWELL: I object to the latter part of the answer, and move to strike it out on the ground that it is not responsive.

Q. About how many customers, stating it approximately, did you have in the beginning of the year 1909, and by "customers," I mean owners of theatres or exhibitors of moving pictures? A. I would judge between six hundred and seven hundred.

Q. Were you familiar with the general business conditions at that time, in the moving picture art, that is, the names of your competitors, and the manner in which the business was done? A. Yes, sir.

Q. Were there many men doing a rental exchange business at that time that had four or five branches? A. Yes, sir.

Q. Were you one of the larger rental exchanges? A. I think at that time I was about the largest renter in the business.

Q. There was an association of rental exchanges in the business in the year 1908, was there not? A. There was an association termed "Film Service Association" comprising the film exchanges and film manufacturers and machine manufacturers.

Q. Were the film manufacturers that were members also engaged in the business of rental exchanges? A. Several of them were and several were not.

Q. Which of the manufacturers were engaged not only in the manufacture but also in running rental exchanges? State to the best of your recollection. A. I don't know as to whether the same corporations that manufactured film were the identical corporations running exchanges, but the individuals, comprising the corporations manufacturing film were in the rental exchange business. They consisted of the Vitagraph interests, George Spoor, Chicago; Selig, Chicago; Lubin, Philadelphia, and George Kleine, Chicago.

Q. State whether there was in the year 1908 keen competition prevailing between what were known as the two factions of the motion picture business? A. There was.

Q. What were those two factions? A. The Edison licensees, on the one hand, and the Independents represented

by George Kleine and his importations and the American Mutoscope and Biograph Company, on the other hand. 1

Q. Were you present at a meeting of the rental exchanges held in New York City in January, 1909? A. Yes, sir.

Q. And where was that meeting held? A. Imperial Hotel, on Broadway.

Q. How many representatives of the rental exchanges, giving it to the best of your recollection, were present at that meeting? A. About sixty.

Q. Was the date of this meeting before the entering into of what is known as licensed rental exchange agreements with the Motion Picture Patents Company? A. Yes, sir. 2

Q. When you went to the meeting, what papers, if any, did you find had been distributed among the seats? A. Printed forms of the Motion Picture Patents Company's contracts with the exchanges.

Q. Had those forms of license agreements been distributed among the rental exchanges prior to that date? A. No, sir, it was an absolute surprise to them.

Q. How many of those agreements were found there when the exchanges assembled? A. There was one on each chair in the room, and there was a package of several hundred on a desk, or on a table, rather. 3

Q. This was a meeting of the Film Service Association? A. Yes, sir; the annual meeting.

Q. Who was the Secretary of that association? A. Dwight MacDonald.

Q. This gentleman who has just entered his appearance here? A. The same one, yes.

Q. Did you elect officers? A. Yes, sir.

Q. For the ensuing year? A. Yes, sir.

Q. Who was elected President? A. I was.

Q. State whether or not anything was said by Mr. MacDonald as to these licensed exchange agreements which were found in the seats? 4

Mr. CALDWELL: Objected to as irrelevant, incompetent and immaterial.

Q. Before you answer that question, Mr. Swanson, let me ask you another? Did Mr. MacDonald resign on that day? A. He did.



1 Q. Did he state what position he was prepared to accept?

Mr. CALDWELL: Objected to upon the ground that it is irrelevant, immaterial and incompetent.

A. He did.

2 Q. And what was that? A. He stated that he was resigning with regrets from the association; that he was going to or had accepted the position of General Manager of the Motion Picture Patents Company, and that he would be glad to discuss the contents of the printed form that had been presented to the meeting.

Q. Was that printed form read to the meeting? A. I read it to the meeting.

Q. Now, going back to my question preceding—please state what, if anything, Mr. MacDonald said in regard to those license agreements after you had read one?

Mr. CALDWELL: Objected to because irrelevant, immaterial and incompetent.

3 A. He stated that the Motion Picture Patents Company had been formed and had issued these agreements for the purpose of uplifting the business, controlling the same, and removing false competitors who were not entitled to make film, and that they would be issued only to worthy exchanges; that they were offered in the open meeting merely for perusal, and that the question of the signing of the same and the acceptance of the same would be taken up at a later time by the officers of the Motion Picture Patents Company.

Q. Were any of the manufacturers present during any of this time? A. Mr. Lubin and Mr. William Rock.

4 Q. Did Mr. Lubin say anything? A. He did.

Q. What did he say?

Mr. CALDWELL: Objected to as irrelevant, incompetent and immaterial.

A. In an effort to create enthusiasm in favor of the agreement, he called for the attention of the Chair, and stated that he had been legally fighting the patent interests for years, and that he had lost \$35,000, his first accumulation in business efforts, and that he had lost \$75,000, his second accumu-

lation, and that at both times he got broke fighting in court, and he advised everyone present, owing to the fact that it created litigation that was expensive, to join with his ideas and thoughts and coincide and connect up with the Motion Picture Patents Company, which would undoubtedly prove a boon and benefit to the business, and to the individuals in particular who were granted licenses. 1

Q. Do you recall anything else that was stated by Mr. MacDonald or Mr. Lubin; was anything stated about Independents or competition on the outside?

Mr. CALDWELL: Objected to because irrelevant, incompetent and immaterial. 2

A. In a general way Mr. MacDonald went over the matter of the independents' position, and the former licensees, the Edison licensees, and pointed out that the formation of the Patents Company would unquestionably have the effect of eliminating that competition and bring about harmony, and inasmuch as the Biograph Company and George Kleine, had been taken into the Motion Picture Patents Company that that of course removed independent competition and that therefore it looked like the respective licensees under the Motion Picture Patents Company would have the entire field to themselves, as had been stated before, that it was a 95 per cent. business proposition and a five per cent. legal. There was nothing further said by Mr. Lubin that I can recall, except in his rambling way referring to his litigation expenses and to how glad he now was that the thing was now settled and that everything was going to be made harmonious for the benefit of all. 3

Q. Did you leave the room shortly after this for a while?  
A. I did.

Q. And who did you find outside, if anyone, outside the room in the hallway? A. I found Mr. Selig and Mr. Spoor, Mr. Lubin and Mr. Dyer and Mr. George Kleine, and Mr. Long of the Kalem Company, I believe; I am not certain about Mr. Long. 4

Q. State whether or not any of the manufacturers came out of the meeting of the exchanges and said anything to the other manufacturers as to the action of the rental exchanges?  
A. Yes, Mr. Rock came out and talked to them.

1 Q. What did he say, if anything?

Mr. CALDWELL: Objected to as irrelevant, incompetent and immaterial.

A. He approached this group standing close to the elevator in an excited manner and he said, "They eat the bait up"—he said, "eat." "Eat it up, hook, line and sinker, and we have got them by the tail."

Q. Did you shortly after that return to the meeting? A. I did.

2 Q. State whether or not a committee was appointed by the rental exchanges to confer with the manufacturers, and who comprised that committee? A. On motion of some member, it was seconded and carried and the chair was requested to appoint a committee of five to wait on the representatives of the Motion Picture Patents Company in connection with certain disagreeable conditions of their license agreements. The chair proceeded to appoint five members to wait on them, and they did.

Q. Who were the members? A. Of the committee?

3 Q. Yes. A. Myself, as chairman, Mr. Laemmle, now of the Universal Film Company.

Q. Of the Universal Film Company? A. Yes, sir; Mr. Clarke of Pittsburg, and Mr. Gillingham of Detroit, and one other; I do not recall who that fifth man was just now.

Q. What were the provisions of the exchange license agreement which this committee was directed to take up with the manufacturers? A. A paragraph in relation to a two weeks' cancellation clause, and the matter of royalty on projecting machines to be collected from exhibitors.

4 Q. You refer to the paragraph permitting the Patents Company to cancel the license of the exchange without cause on fourteen days' notice? A. Yes, sir.

Q. And the other feature which they found objectionable was the \$2.00 a week exhibitors' royalty? A. Well, it was not \$2.00 then. It was more than that at that time. It was later changed to \$2.00.

Q. Did you with this committee see any of the manufacturers on that day? A. I did.

Q. What manufacturers did you see? A. I saw Mr. Dyer, and Mr. Marvin and, I believe, Mr. Scull.



Q. Please state to the best of your recollection what you said to them, and what they said to you? 1

MR. CALDWELL: Objected to as incompetent, immaterial and irrelevant.

A. I stated that, as an experienced exchange man, we thought it was unfair to tie us up with a contract that was so obviously one-sided, leaving the matter of cancellation entirely in their hands, and allowing the jeopardizing of our business solely to their judgment, and requested that they insert in that clause, that no contract would be cancelled unless for cause. Mr. Dyer replied to that, that there would not be a single word of any character changed in the contract. It would remain just as it was, and we could take it or leave it. I stated to him then that if the entire body objected to it, they would necessarily have to stop making film, and they would not buy their film, and he said he did not think we had nerve enough to do that. 2

Q. Were there any manufacturers of film in the country at that time who had not joined the Patents Company? A. There was no source of film supply of any kind except the members of Motion Picture Patents Company. 3

Q. What was said, if anything, about the weekly royalty for exhibitors? A. Mr. Dyer stated that the exchanges would be compelled to collect this royalty, and send it in to the Patents Company's offices, and that they considered reducing it from \$3.00 or \$4.00, whichever the amount is—I have forgotten at this time—to \$2.00 a week. And I objected to that, and stated that inasmuch as I thought it amounted to over a million dollars a year, that as little trouble as they could go to would be doing their own collecting. We stood on that matter for over a half an hour, and argued the question, and Mr. Dyer insisted along with Mr. Marvin that the exchange men collect the money for the Patents Company, and send it in to the Patents Company, but they did say, however, that they would consider the matter of doing their own collecting, and would give us the result of their opinion at a later date. Which they never did, however. 4

Q. Were the exchanges opposed to the doing of the collecting for the Patents Company? A. On the ground that competition would in the very near future bring about the condition where the exchanges would be paying the royalty in-

1   stead of the exhibitors, in their effort to secure business  
away from each other.

2   Q. Have you now stated to the best of your recollection,  
the substance of that interview between the manufacturers  
and this committee on the rental exchanges? A. With the  
exception that Mr. Dyer in his effort to pacify us in his re-  
fusal to change these obnoxious features of the contract,  
stated that it was a very beautiful organization and one that  
they had been working very laboriously to accomplish, and  
they now had the situation pretty well in hand, and had com-  
petition shut out, and those that were fortunate enough to  
secure licenses, would undoubtedly make more money than  
they ever did in their lives. That they had absolute control  
of the business.

Mr. CALDWELL: It is understood that my objection  
relates to the whole of the conversation detailed by  
the witness—as incompetent, irrelevant and immat-  
terial.

Mr. GROSVENOR: I am agreeable to that.

3   Q. State whether or not Mr. Marvin or Mr. Dyer said any-  
thing about the termination of hostilities that had been in  
existence between the two factions represented by Mr. Mar-  
vin and Mr. Dyer at the time. Can you recall whether any-  
thing was said about that at that time or anything done? A.  
Mr. Dyer, in his efforts to show the harmony existing, and to  
demonstrate to us the commercial plane that the future held  
out, he arose from his desk, and walked over to Mr. Marvin,  
who was standing in front of the mantel piece, and put his  
arm around him, and said, "Gentlemen, you can see, we are  
the greatest of friends, where heretofore we have been  
4   enemies for years, and let this be a guide for your actions in  
harmonizing among each other, as we have done among our-  
selves."

Q. This meeting was at the offices of the Patents Com-  
pany? A. Yes, sir, at 10 Fifth Avenue.

Q. Did the committee of the rental exchanges then  
return and report back to the Association? A. Yes.

Q. On the same day? A. On the same day.

Q. State whether or not when you pointed out to Mr.  
Dyer your objection to the clause which permitted can-  
cellation without cause, he said anything about not ter-

minating any of the agreements except for cause? Do you recall whether anything was said about that? 1

Mr. CALDWELL: Objected to as incompetent, immaterial and irrelevant.

A. He stated that so far as that paragraph was concerned, they had not any intention of changing it in a single iota, as it was absolutely necessary that they should have positive control of the exchanges that they were selling to, in that respect, meaning cancellation control, but that he would assure us on his word that so long as there were no violations of the contract, that it would remain in existence during the life of the patents held by the Motion Picture Patents Company. 2

Q. When you went back and reported to the exchanges, what was done, what action was taken? A. They demanded that another committee be appointed to wait on the Patents Company representatives the following day for the same purpose, to see if by perseverance, the matter could not be adjusted.

Q. Was the appointment of that committee unanimous? A. Yes, sir, the appointing of the committee was done by the chair. 3

Q. There was not any objection to that? A. None whatever.

Q. And had there been any objection to the appointment of the earlier committee? A. No, sir.

Q. The action was unanimous? A. Yes, sir.

Q. Who comprised this second committee? A. Mr. Swanson, Mr. Laemmle and Mr. Clark of Pittsburgh. Mr. Aiken of Chicago. I do not recall the fifth man.

Q. Did you see the manufacturers the next day in accordance with your instructions? A. I saw Mr. Dyer only, and Mr. Scull. 4

Q. State to the best of your recollection, what was said? A. Mr. Dyer stated that there was not any use of our wasting any more of our time in that respect—

Mr. CALDWELL (Interrupting): The question is objected to on the same grounds as I have stated.

A. (Continuing): That they had fully determined that



1 they were going to have the contract put through just as it was, without any change, and he thought we ought to have enough confidence in them to rely on their fairness in their business dealings. He stated the contracts would be mailed in duplicate to the various exchanges at their different locations, and would be signed and returned, and such of them as were acceptable to the Patents Company—such of the parties as were acceptable to the Patents Company—the Patents Company would then sign and return one of the copies to the different exchange men.

2 Q. Was anything said about putting that in writing in the form of a letter— A. (Interrupting): Yes, I asked Mr. Dyer—

Mr. CALDWELL (Interrupting): That question is objected to on the same grounds.

3 A. (Continuing): I asked Mr. Dyer if he objected to giving me that statement in the form of a letter that I could take back to the body, the Film Service Association body, setting forth the fact that any exchange company that signed the agreement need have no fear of cancellation for other than violations of the terms of the contract, and assuring the parties to the contract that their contract would not be cancelled during the life of their patents, except for the violation of same. He refused to give me that letter.

Q. Did you then report back to the exchanges the result of your interview? A. Yes, sir, I did.

4 Q. And after that, the different persons present scattered to their places of business? A. After taking that report back, there were twenty-seven exchanges, and myself, making twenty-eight, that met in one of the rooms of the hotel, the Imperial Hotel, and agreed among ourselves that these twenty-eight would draw out from the Patents Company if they would not make that concession, and that if they insisted upon it, and after the arrival of the contracts, it had not been changed, we would have a meeting at a future time and we twenty-eight would refuse to sign up with them.

Mr. CALDWELL: I move to strike out the answer

on the ground it is not responsive to any question  
that has been asked. 1

Q. When was this meeting of the twenty-eight? After  
you had returned from the second interview? A. Yes, sir.

Q. What happened to the twenty-eight? A. They did  
not keep their word. That is, not all of them.

Q. Then you returned shortly after that to Chicago,  
is that right? A. Yes. In the matter of a few days.

Q. Mr. Swanson, did you attend any meeting at the  
Republican Club the night before the first meeting of the  
rental exchanges at their hotel, the Imperial? A. I slept 2  
at the Republican Club two nights preceding that meeting.

Q. Did any manufacturers of motion picture film come  
around to you there and talk with you about the condi-  
tions in the moving picture business? A. They did.

Q. Among others, who came to see you? A. Mr. Selig  
and Mr. Spoor, and Mr. Kleine. We all slept in the same  
room for two days and two nights. We stayed in the  
same room, rather.

Q. Mr. Spoor is of the Essanay Company? A. Yes,  
sir.

Q. And Mr. Selig of the Selig Polyscope Company? A. 3  
Yes, sir.

Q. And Mr. Kleine is Mr. George Kleine? A. Yes, sir.

Q. Was anything said by any of these gentlemen as to  
the formation of the Patents Company and the proposed  
change in the manner of doing business? A. Yes, sir, there  
was.

Q. State, to the best of your recollection, what was  
said?

Mr. CALDWELL: Objected to as incompetent, im- 4  
material and irrelevant.

A. Of course, it was about the only matter that was  
discussed during the two days that we were in that room.

Q. You knew at that time that the two factions had  
gotten together, and that the Patents Company had been  
organized some weeks earlier? A. Yes, I knew it, for the  
reason that I had been furnished with a typewritten copy  
three days before this Imperial Hotel meeting, by an out-  
sider, who submitted it to me, and gave me the idea of

1 the thing. I knew it before any one else did, in the exchange business, other than the manufacturers who were in the exchange business. The conversation in the room—Mr. Selig, Mr. Kleine and Mr. Spoor endeavored to show me what a great benefit it would be to themselves to have this thing go through, as they had outlined it, or as it had been outlined.

Q. In what way did they point out the benefits? A. The License Company formation and the contract as proposed.

2 Q. In what way would it benefit them? A. It would benefit them in having control of the business, and shut out competition.

Mr. CALDWELL: It is understood that my objection applies to this entire conversation.

Mr. GROSVENOR: I have said so several times.

Mr. CALDWELL: Not with respect to this conversation. You had in mind another conversation.

Mr. GROSVENOR: If you will keep your objection in mind, and not interrupt the witness—

3 Mr. CALDWELL (Interrupting): I do not mean to interrupt the witness. I think the time to make the objection is when the question is asked.

Mr. GROSVENOR: It is understood that Mr. Caldwell's objection, incompetent, immaterial and irrelevant, can be put in whenever he likes, at a later time.

(To the stenographer.) Now, will you kindly read that answer as far as it has gone, and let the witness hear it?

The stenographer thereupon repeats the answer.

4 A. I told the gentleman there that I had already in my possession a copy of the proposed contract with the exchanges, and I also had a copy of another contract that they proposed putting out relative to projecting machines. This second contract never had been put out by the Patents Company, and they said if I was their friend, which I had presumably been for years, that I would work with them to help them put it over, as they thought well of the scheme, and it would unquestionably make them all rich, and would perhaps be personally beneficial to me, but they requested one particular favor, that I would make no speech regarding the



matter whatever at the opening of the meeting of the Film Service Association. I gave them the promise that I would not make any speech on the matter, and did not. 1

Q. Was anything said about patents during this conversation at the Republican Club? A. They went over the ground, of course, that they had accumulated all the available patents on projecting machines, and on cameras and on films, that it was possible to get, and, that they had formed that into a holding company, to be known as the Motion Picture Patents Company; that they had made arrangements with the Eastman Kodak Company to get the exclusive use of the Eastman stock and that a competitor would have but very little chance entering the field, owing to the fact that they had all the patents on the various apparatus, and particularly the Eastman stock, the Eastman raw stock, you know. 2

Q. By that, you refer to the film which is used by the manufacturers? A. Yes, sir, the raw undeveloped film. Unexposed film.

Q. State whether or not anything was said about the purpose of combining all of these patents? A. The purpose of combining the patents was for the purpose of stopping future ruinous litigation among themselves, and likewise for the purpose of controlling the business of making moving pictures and disposing of them. 3

Q. Do you recall anything else that was said at the Republican Club during those two days? A. Nothing except that Mr. Selig said that they—that he would not take five million dollars for his business, where he had been willing to take a half million two months before that.

Q. You have stated that you returned to Chicago a few days after this meeting at the Hotel Imperial. Did you sign the license agreements and send them in to the Patents Company? A. They sent in two copies for each office I had in Chicago. Sent them all to Chicago, and I signed them there. I sent them back to the Motion Picture Patents Company and never heard anything further from them. From the contracts. 4

Q. Did you for several weeks receive film from them? A. Yes, sir, during the time of the signing of the contracts and the returning of them.

Q. I am coming to that later. Mr. Swanson, during the years immediately preceding this time of which we are speak-

1 ing, namely, January, 1909, had your profits in the rental exchange business been large? A. I thought they were—

Mr. CALDWELL (Interrupting) : Objected to.

Q. Had your net profits during the preceding years been \$100,000 a year or more? A. Yes, sir.

Mr. CALDWELL: Objected to.

2 Q. Considerably more than that? A. Considerably so, yes, sir.

Mr. WILLIS: Will you put in there an objection to that question as leading?

Q. And thereafter, from about the middle of January, until the middle or latter part of February, state whether or not you received film from these different licensed manufacturers? A. Every day. Received them every day.

3 Q. Do you recall whether or not there was any meeting of different persons interested and engaged in the motion picture business at Mr. Kleine's office in Chicago, towards the middle of February, 1909? A. There was. A very large meeting.

Q. What was the occasion of that meeting? A. To discuss the matter of the \$2.00 a week royalty of projecting machines being cancelled.

Q. How many people, approximately, were present? A. About 50. Perhaps less. Forty or fifty.

4 Q. Were any of the licensed manufacturers there? A. Yes, sir.

Q. Please state who? A. Mr. Selig, of the Selig Polyscope, Mr. Kleine, Mr. Spoor, Mr. John Hardin, representing the Edison Company; and Mr. Montague, representing Pathe, Mr. William Wright, representing Kalem, Mr. John Rock, representing the Vitagraph, and perhaps others, I do not recall just who.

Q. And were there a large number of exhibitors there? A. None whatever, that is, not as exhibitors. There might have been exchange men who owned theatres.

Q. The body was composed principally of rental exchanges? A. Rental exchanges and projecting machine

manufacturers, and selling agents of film manufacturers, and projecting machines and film exchanges. 1

Q. Was there any discussion at the meeting in regard to the new license exchange agreements? A. Yes, sir.

Q. What provision in the agreement was particularly discussed? A. The matter of the two weeks' cancellation clause, as regards the film exchanges, was the first matter discussed, but that was deemed not altogether of importance at that meeting. At that time, the purpose of the meeting was the discussion particularly of the royalty on projecting machines which dealers did not seem to think just, and wanted to have removed either by refusing to further patronize the Patents Company in that connection, or by persuasion, if it was possible. 2

Q. Did you make a speech on that subject? A. I did, yes, sir.

Q. Opposing the imposition of this royalty on the exhibitors or in favor of it? A. Opposing it. I was elected chairman of that meeting, and was called upon the floor to present the purposes of the meeting, in view of the fact that the representatives from the Patents Company were there, that the matter be outlined fully, and as dispassionately as possible. It was taken up and they were perfectly willing to express a vote on the question. 3

Q. Did any of these licensed manufacturers or any of their representatives speak on the same subject after you had spoken? A. Instead of endeavoring to answer the proposition as set forth in the speech that I made regarding the matter, they adopted the theory of ridiculing it, and just simply tried to laugh it off, and it resolved itself into a passage of personal remarks which finally broke up the meeting.

Q. What manufacturers, if any, spoke on the subject? A. Mr. Kleine made quite a long address, presented his contracts as they questioned as to his right to enter into an agreement with the Patents Company—he presented his contracts with Gaumont, and Urban, and upon request from myself that he read them instead of just flashing them under our eyes, he refused to do so, and put them back in the safe, and also entered into personal vilifying of myself and others. Mr. Selig made no comment except of a personal character. 4

Q. Do you know whether or not any of the licensed manufacturers went from Chicago to New York the next day? A. Mr. Spoor and Mr. Selig and Mr. Kleine left Chicago and



1 reported that they had come to New York the following day after that meeting.

Q. The day after that, namely, two days after this meeting at Kleine's office, state whether or not you received any notice from the Patents Company. A. I received a telegram signed "J. J. Kennedy, Treasurer," that my license had been cancelled, although I never had any license.

Q. Did you thereafter receive film from the different licensed manufacturers? A. Outside of one or two occasions, I did not. They did not live up to their two weeks' cancellation agreement, even. They stopped my supply immediately.

2 Q. Did any of them complain that you had violated in any respects any of the terms or conditions of that licensed exchange agreement? A. None whatever, except a letter from the Biograph Company, demanding payment for what I owed them. A matter of \$200 or \$300.

Q. How many years had you done business with these different manufacturers, some or all of them? A. Ten years. Or about that. Not on so extensive a scale, of course. In one way or another, I had been purchasing their goods for ten years.

3 Q. Your business had grown very much in the last few years preceding 1909? A. Yes, sir. Very rapidly.

Q. Did you go to New York to see any of the Patents Company people in connection with the cancellation of your license? A. I left Chicago the day following the receipt of the above mentioned telegram, to come to New York. I proceeded to the Motion Picture Patents Company's office, No. 80 Fifth Avenue, and there met Mr. MacDonald, and discussed the matter of the cancellation with him.

Q. Did you have any trouble getting in when you gave your name? A. A little bit, yes.

4 Q. Who did you see eventually? A. Mr. MacDonald came out and escorted me into his office; from the outer office, to his inner office.

Q. Mr. MacDonald was the General Manager of the Patents Company at that time? A. He was the General Manager at that time.

Q. State what was said at that interview with Mr. MacDonald? A. I stated to Mr. MacDonald that I had been notified that I would no longer receive the supply of licensed film, and I had been notified to that effect by telegraph and I wanted to know the reason why. That all of my offices had

been cancelled. He said he was not at liberty to give me any reason, in fact, he did not know except that they did not want to do any business with me any further, and I spent perhaps an hour or an hour and a half with Mr. MacDonald, and that was about the only response that I could get from Mr. MacDonald on the matter. 1

Q. What effect upon your rental exchange business did this cancellation by the Patents Company have? A. In view of the fact that simultaneously with their notifying me by telegraph of my cancellation, they likewise notified all of my customers (having had a rule, as they did, that each exchange was compelled to give them a list of its customers supplied by them) and they likewise telegraphed my customers that I had been shut off from supply, and it finally had the effect of putting me out of business entirely. 2

Q. Had you complied with the condition of the license agreement, and sent to the Patents Company a list of your customers? A. I had. Also, sent them all the \$2.00 I collected.

Q. Did you try to continue the rental exchange business for a while? A. I did, yes, sir. The difficulty of continuing at that time was the fear on the part of exhibitors. While I had a great many of them who were personal friends, they stated to me that they could not any longer do business with me— 3

Mr. WILLIS (Interrupting): I object to that as hearsay.

A. (Continued): Notwithstanding the fact of their friendship, because they were in fear of litigation with the Patents Company, and they could not afford a lawsuit just to patronize me. That it would be cheaper for them to pay their royalty and do business with the Patents Company. 4

Mr. CALDWELL: I move to strike out the entire statement of the witness on the ground that it is not responsive to any question that has been asked.

Q. How soon after this did you give up your Chicago branch? A. In the Fall of 1911, if I am not mistaken. I think it was that day.

Q. And your Omaha and St. Louis and Philadelphia

1 branches? What became of them? A. I had no Philadelphia branch.

Q. What became of your Omaha and St. Louis branches and your Kansas City branch? You had a branch there, did you not? A. I had a branch there, yes, sir, but that Mr. Dyer compelled me to close before the license agreement at all was considered. Mr. Dyer ordered me to close the Kansas City, by means of a letter, owing to the fact, as he stated, that I had not bought the necessary quantity of films. I thereupon sent Mr. Dyer all of the receipted bills of the amount of film required according to the contract, and he wrote back and said—Mr. Scull wrote back and said that notwithstanding that I had sent these bills, that they herewith enclosed them. It did not make any difference whether I bought that amount or not. Close it up anyway.

Q. Was that after the Patents Company was formed? A. No, that was prior to the Patents Company formation. Just a few months. Two or three months before that.

3 Mr. CALDWELL: That preceding question is objected to on the ground that it gives the contents of a letter which is not produced.

The Witness: The letters were produced in testimony before the courts. That is the reason I cannot produce them.

Mr. GROSVENOR: We will make an effort to get it later.

4 The Witness: The Omaha office I closed in 1910, as I could not make it pay at all. St. Louis I endeavored to combine with others, in order to continue the business, which we did, under what is known as the Swanson-Crawford Film Company, and I afterwards sold my interest in that. The New Orleans office I closed entirely.

Q. What had been a profitable business, bringing you more than \$100,000 a year prior to the cancellation of your license, dwindled to nothing? A. Practically so, yes, sir.

Q. And had your business been a constantly growing business before the cancellation of the license? A. One



year the business jumped from \$90 a week total receipts to over \$19,000 a week. 1

Q. Your business, then, had been continually growing prior to this cancellation? A. I say, it had grown from \$90 gross to nearly \$20,000 a week gross in one year.

Q. In one year? A. Yes, sir.

Q. How about the other years? A. Each year just kept naturally, of course, increasing, but not at the same ratio.

Q. Not in the same proportions? A. No.

Q. Mr. Swanson, you were one of the rental exchange men who were instrumental in forming the Film Service Association, is that correct? A. Yes, sir. 2

Q. Was the Film Service Association friendly to the Edison camp or to the Biograph camp? I mean by that, in the year 1908, were the members of the Film Service Association, those rental exchanges, were they in large part obtaining their supplies from the Edison licensees, or from the Biograph Company and Kleine? A. Well, if any member of the Film Service Association had bought film from Kleine or the American Mutoscope and Biograph Company at that period, they would have been dismissed from membership in the Film Service Association. Then the Film Service Association was an ally of the Edison licensees; could not handle any of the goods but theirs. 3

Q. That was so provided in the agreement? A. Yes, not in the agreement but in the minutes of the Association.

Mr. CALDWELL: Objected to as incompetent, the minutes of the Association not having been produced.

The Witness: And I might say, to correct that impression in the answer, that the purpose of the Film Service Association was primarily simply to comprise the parties working under the Edison license. 4

Mr. CALDWELL: I move to strike that statement out as a mere voluntary statement on the part of the witness, and not in response to any question.

Q. Who got up the Film Service Association? A. There was a call made for a meeting to be held, at the

1 Fort Pitt Hotel at Pittsburgh, in a letter signed R. W. Ullman, which took place, I believe, on a Sunday.

Q. In 1907? A. In 1907.

Q. When was that? In November? A. November, I think so. I attended that meeting and was elected chairman of it, and continued as chairman for several months. We met at several different cities, in forming our organization, wrote the by-laws for it, and organized it.

2 Q. Who else was interested in its formation? A. There was not anyone particularly that I could see, that is, actively. They were all mentally interested, but not actively.

Mr. WILLIS: I cannot hear you. What was that?

The Witness: Not anyone other than myself was actively engaged. There did not seem to be anyone willing to give up their time and money to the formation outside of myself.

3 Q. Did you see any of the Edison licensees, or any of the officers of the Edison licensees, in connection with the agreements; for instance, you referred to that agreement as providing that members should obtain their film only from the Edison licensees? A. Yes, sir, I saw all of the Edison licensees in regard to the matter at various times.

Q. Please state those whom you recall? A. As to whom I saw?

Q. Yes. A. I saw the head or representatives of the Selig, Kleine, and the Essanay, Lubin, Edison, Pathe, Vitagraph; in fact, all of them.

4 Q. Did Kleine refuse to join the association? A. Mr. Kleine did join the association, and afterwards withdrew, for the reason that the association did not permit him to release the number of various brands that he wanted to release per week. They wanted to reduce him to three and he wanted nine, and asked for nine. He told me afterwards he was willing to compromise on six.

Q. He was engaged merely in importing? A. In importing. He withdrew from the Film Service Association at the meeting that occurred at Buffalo.

Q. That was in February, 1908? A. I don't recall what month it was, but it was some time after the Chicago

meeting. We adjourned the Pittsburgh meeting to Chicago, and then met again at Buffalo, and later on in New York. 1

Q. Do you recall any suits being brought against Kleine or any of Kleine's customers in the year 1908? A. I recall about 30, between 30 and 33 suits that were brought in Chicago against exhibitors that were using his goods, by representatives of the Edison interests.

Mr. CALDWELL: Objected to as hearsay.

Q. State whether or not you had any conversation with Mr. Frank L. Dyer of the Edison Company, in connection with the bringing of those suits? A. I had a number of conversations with Mr. Dyer regarding that matter. 2

Q. State to the best of your recollection what he said, and what you said, and what was done? A. At the first meeting with Mr. Dyer, I had in Chicago, regarding Mr. Kleine and the Independent Film, as we called them, I called his attention to the fact that Kleine had interested a man named Seaver of Chicago, and that they were very active, and that they had cut the price of service to something that we had never dreamed of doing. It seemed to be in the neighborhood of \$15 per week, and they were making long contracts for a period of six months with exhibitors that would sign up with them at that price, notwithstanding the fact that we considered that a price that would ruin any business, and Mr. Dyer said then he thought he could find a way of preventing it, and stopping it. I asked him how, and he said that he would have Mithin— 3

Mr. CALDWELL (Interrupting): Who?

A. An attorney in Chicago, and who was then Western Secretary of the Film Service Association, assist him in bringing suits against these exhibitors. Mr. Mithin was never used for that purpose, but other attorneys, of whom I do not recollect the names, were used for the purpose of bringing suits against thirty or more exhibitors, some of which I attended in Court, and the purpose of Mr. Dyer, as he stated, was to bring a multiplicity of suits, and harrass them to such an extent that they would eventually quit using Mr. Kleine's goods or any other person's goods, or the Association, as it was called. Of course, the Association had noth- 4



1 ing to do with that particular line of goods. It was merely a misnomer. Those suits were brought for the purpose of intimidating exhibitors, as Mr. Dyer stated.

Mr. CALDWELL: The last statement is objected to, and I move to strike it out as not responsive, and is entirely hearsay.

The Witness: Not hearsay. Mr. Dyer stated that to me. That was not hearsay.

Mr. CALDWELL: I move to strike out the last response of the witness.

2

By Mr. GROSVENOR:

Q. Do you recall how the selection of exhibitors was made? That is, how it was determined that— A. (Interrupting): Mr. Dyer stated that he wanted to find exhibitors who did not have too much money, but had some resources, and were responsible, and they would have more regard for the dangers of litigation than some irresponsible exhibitors, and had Mr. Mithin, as secretary, investigate the financial standing of exhibitors before suit was brought.

3

Q. How many years had Mr. Kleine at that time been importing film? Are you able to state? Had it been for a number of years? A. Quite a number. I don't know the exact number of years. I had known him as an importer for a number of years.

Q. And had the exhibitors in Chicago and other cities where you had been doing business, been exhibiting his films for all this period? A. Yes, sir.

Q. These suits were all instituted in the year 1908, after Mr. Kleine left the Film Service Association? A. Yes, sir.

4

Q. State whether Mr. Dyer said anything when you called his attention to the low prices at which Kleine was giving service? A. He said something in answer to my suggestion.

Q. State what it was, as far as you recall? A. I asked him if he did not think it was possible or feasible to eliminate that ruinous competition, and he said that he did not think that it was. I suggested that perhaps there might be the possibility of getting together with Mr. Kleine, and he agreed that that would be a very satisfactory matter if it could be arranged. I suggested that I would be very glad to act as an intermediary between him and Kleine for the purpose of

bringing about that state of affairs, and Mr. Dyer then stated to go ahead and see Kleine and see if any possibility of peace could be brought about. I did that. 1

Q. What did Kleine say? A. I went over to Mr. Kleine's office a few minutes after that conversation with Mr. Dyer and told him that I had been sent there by Mr. Dyer, and there was so much personal feeling in the matter, I presumed it would be obnoxious to both of them to have a discussion of the matter, and I said I would be glad to take it up between them, and he said that he would be glad to drop all trouble and work in harmony with the Edison licensees if it was possible to do so. I asked him what the terms of these possibilities were, and he said that they would be willing to come in and agree to the price arranged for selling and renting and all other matters in connection with the business, but that they had refused to pay any royalty of one-half a cent to the Edison Company, and on the other hand without doubt, that his associates in the Biograph Company would require a division of that royalty before they would consider any peace negotiations. I took that information back to Mr. Dyer, and he said, of course, that terminated the matter. That the Edison Company would not agree to any division of royalties, "as the old man," as he put it, "needed the money." 2

Q. After this talk with Dyer and prior to the January, 1909, meeting in New York, did you see Selig at any time, and did he say anything about this? A. I saw Mr. Selig every day or two. He and I were very friendly. We took our dinners together very frequently. 3

Q. You were one of the large purchasers of film from the different manufacturers at that time, weren't you? A. Yes, sir.

Q. You owned the largest exchanges in the country? A. Had been, yes, sir.

Q. State what, if anything, Selig stated indicating the formation of a combination or consolidation of interests? A. It would be quite a hard matter to give detailed conversations with Mr. Selig relative to that, with any continuity, for the reason that I visited Mr. Selig's office on an average of three or four times a week, and each time we entered into discussions, relative to the business itself. But, touching on the matter of the Patents Company, Mr. Selig never mentioned the name of the Patents Company, but he told me several months in advance of any knowledge on my part of its exist- 4

1   ence, that they were framing up a proposition that would  
 settle all difficulties in the matter of independent competition  
 and litigation among the various film manufacturers, and that  
 they would have things shaped up so that the parties to this  
 arrangement would have absolute control of the moving pic-  
 2   ture business. He advised me, as he had always been my  
 friend, in his patronizing way, that he would see that I was  
 a participant in them.

Q. Did any other manufacturers, prior to this meeting in  
 January, 1909, say anything, or give any intimation about the  
 formation of the consolidation of interests? A. I had a crim-  
 2   inal action pending against a party in Chicago, who was also  
 in the moving picture business, and Mr. Selig and Mr. Spoor  
 and Mr. Kleine waited on me in my office on two different  
 occasions, in an effort to try to persuade me to quit  
 prosecuting this party, and stated at that time that they did  
 not want any action or publicity of that nature, owing to  
 the fact that they intended bringing about a condition in  
 the very near future, that would elevate the business consider-  
 3   ably, and that if I insisted on prosecuting, that it would act  
 as a deterrent against me when matters of membership in this  
 new proposition were to be considered. I refused to drop  
 this prosecution, however, and after that time, they did not  
 discuss matters openly with me. But that was the nearest  
 reference that I know of as to the formation of the Patents  
 Company up to the announcement of it.

Q. Going back to the time of the formation of the Film  
 Service Association in the latter part of 1907 or the beginning  
 of 1908, did you have any conversations with Mr. Blackton,  
 or any of the other manufacturers as to the need of an asso-  
 ciation like the Film Service Association, and if so, please  
 state what was said? A. Shortly after the meeting together  
 4   on the morning of the day the association was first considered  
 in Pittsburgh, we gathered promiscuously in a room in the  
 hotel, and I was then made a temporary chairman, and Mr.  
 MacDonald was made secretary, and a gentleman from Cleve-  
 land was made treasurer—temporary officers, all of them—  
 and a man named Strong of Detroit was made, I think it was,  
 vice-president. We discussed the purposes of getting to-  
 gether for two or three hours, and myself and this little gen-  
 tleman from Cleveland—I cannot recall his name—and Mr.  
 MacDonald, went upstairs to visit the manufacturers who had



gathered in a room up there. Mr. Blackton was presiding, and acting as spokesman. 1

Q. He was connected with what company? A. The Vitagraph Company. We came up and outlined the ideas that we would like to do in the way of forming an organization.

Q. That is, you went up with these others? A. Went up with this committee of two others, Mr. Peckham, of Cleveland, and Mr. MacDonald, to visit the manufacturers, and outline the purposes of our getting together, and Mr. Blackton stated that the manufacturers would be very glad to work in harmony with the exchange men, in fact, become a part of an organization with them for the betterment of the business, and they requested us to retire from the room and to form an organization and draft our by-laws and constitution and so forth, and to submit it to them, and they would consider whether they would join, or not. We retired as a committee, down to the association's meeting room, and then several of us retired again for the purpose of drafting by-laws and so forth, and submitted them the next day to these manufacturers. They joined the organization. 2

Q. That was at the Buffalo meeting? A. No, sir; that was at the Pittsburgh meeting. 3

Q. State whether or not there was any discussion of patents at the different meetings, or was it a talk— A. (Interrupting): Oh, yes, patents were always discussed at those meetings.

Q. And how about improvement of price and other business conditions? Was there any discussion about that? A. Yes, sir. At the Film Service Association meetings, the film manufacturers always attended, but they segregated themselves into a different part of the room. Mr. Dyer did most of the explaining regarding patents and the ideas of what they were going to do under those patents. They were going to charge more for the film and more for the projecting machines under those patents. He further explained that we must always bear in mind that we were not to put too much stress on the patents, however,—that the proposition that they had formed was 95 per cent. commercial and 5 per cent. legal. That is, that this formation was 95 per cent. commercial and 5 per cent. legal. That they had patents, but that there had always been more or 4

1 less litigation over this thing, and perhaps always would be, but that the success of the entire matter depended upon the commercial organization.

Q. State whether or not anything was said about using the license agreements under patents, as the method of forming the combination? Do you recall anything about that?

2 Mr. CALDWELL: That question is objected to. Of course, my understanding is, that this stipulation relating to objections to the testimony, applies to all conversations upon which you have interrogated the witness, and are about to interrogate him?

Mr. GROSVENOR: I am willing to concede it as you understand it.

Mr. CALDWELL: All right.

The stenographer repeats the question.

A. Yes, sir.

3 Q. What was said? A. I came here as a committee of one representing all of the Edison film exchanges in Chicago.

4 Q. You came here to New York, you mean? A. Yes. And for the purpose of seeing Mr. Dyer; we in Chicago having faith in their estimated authority under their patents. I arrived on Saturday. I do not recall the date. I called up Mr. Dyer at Orange, New Jersey, in an effort to make an appointment with him to discuss conditions under those patents, which we purposed to make to him. He said he was going hunting, and he would not be back until Monday. He wanted to know if I would not remain until then, and I said no, but I would submit the proposition to him over the telephone. I said, "We in Chicago have decided that we will combine our business, and make the Edison Company a present of one-half of all our interests, in all our combined businesses, if they can show us where they can shut out the independent competition we are now having in Chicago." He said that was a great idea, he had not thought of it, but he would work it out as soon as he came back from his hunting trip, and he thought very likely it would be accomplished, and it later was, except that they bought the exchanges out altogether.

Q. Have you been engaged at any time in the business of manufacturing motion picture films? A. I have. 1

Q. With what companies? A. The Rex Motion Picture Manufacturing Company, and now the Universal Film Manufacturing Company.

Q. In what year did the Rex Company commence doing business? A. December, 1911.

Q. And did you ever have any difficulty in getting raw film? A. Yes, sir, a great deal of it. We were never able until recently to get Eastman Kodak film.

Q. Any reason stated for the refusal? A. The reasons that were stated—I cannot produce the letters in which the reasons were stated. 2

Q. Where are the letters? A. I do not know. I have had to give this testimony in so many different things, that these various matters are scattered around among different attorneys.

Q. State the reasons now, and we will try to get the letters later.

MR. CALDWELL: The testimony is objected to, unless the letters are produced. 3

A. Well, then, I can only broadly say, it was always understood among the trade that Eastman had refused to sell his raw products to any but the Motion Picture Patents Company or persons whom they authorized to buy it. In one instance, I know they refused to sell the United States Government any, the Bacteriological Committee in Denver. They had me write to Eastman for them, and tried to get it for them, and they could not get it.

Q. You are referring now to the sensitized film which is run through the camera and receives impressions of the pictures? A. Both the negative and positive film, yes, sir. They were compelled to use foreign made material, and it caused a great loss through imperfection and wasting. 4

Q. Back in 1908, and preceding years, were some of these different manufacturers of motion picture films duping? A. Yes, sir.

Q. What do you mean by duping? Copying another man's film? A. Yes, sir. It is a process of utilizing a photograph originally made by the producers of the same, by contact



1 with unexposed positive, and making a negative of that, and then printing from that second negative.

Q. Which companies were leading in the art of duping? I mean by that, doing the act the most frequently? A. Well, one of the most successful and accomplished dupers was Mr. Lubin, and the next to him was the Edison Company.

Q. Did the Edison Company sell two grades of films? A. Class A and B.

Q. With different prices? A. The class A was 12 cents a foot, and the class B was 10 cents a foot.

2 Q. What did class B consist of? A. Class B of the Edison productions was made up of inexpensive productions, such as travel scenes and so forth, and principally dupes.

Q. What other manufacturers were duping in those years? A. Well, Selig kept himself quite busy with it.

Q. And others? A. The Biograph Company were duping, but they did so, I believe, with an understanding, and the paying of a royalty to the parties who originally made the film, and the consent of the original producers.

3 Q. Did the larger per cent. of the manufacturers of projecting machines also take out licenses from the Patents Company? A. All of them who could get a license did, yes, sir. There were just three makes of projecting machines that I know of that did not get a license.

Q. That did not get a license? A. Yes, sir.

Q. Were those the leading manufacturers? A. No, sir.

Q. Was there any change in the prices of projecting machines after the formation of the Patents Company? A. There was a very great change in prices.

Q. Up or down? A. Upwards.

4 Q. Please state what that variation in the price was, to the best of your recollection? A. Well, for instance, the Edison projecting machines were sold at \$95. Immediately after the formation, it was sold for \$155. The Selig Polycope, before the formation of the Patents Company, sold for whatever they could get for it. They standardized their price at \$150. The Power's machine sold about, I believe, \$95, and it was later sold at \$150, and without any additional improvements to any of the machines to amount to anything to justify the rate. Then, there were other changes made to the machines, and the prices were raised to \$225.

Q. As a rental exchange, you had been dealing in projecting machines with the different manufacturers prior to the formation of the Patents Company? A. I did, yes, sir. I

purchased machines in lots of 100, 150 and 200 at a time. 1

Q. Were you acquainted with the prices quoted with Eastman on raw film prior to 1908, and after the Patents Company was formed? A. Yes, sir.

Q. What change was there in their price? A. I used to pay three cents a foot for it before the Patents Company was formed. I pay 3 and five-eighths cents a foot for it now, which is one-eighth of a cent more than the Patents Company pay.

Q. Mr. Swanson, you had conversations at various times with Mr. Dyer and the other organizers of the Patents Company in regard to trade conditions and changes in trade conditions during the years 1908 and 1909? A. Yes, sir. 2

Q. And about the license agreements and the character of the persons that they should be issued to? A. Yes, sir.

Q. Do you recall whether or not at any time Mr. Dyer stated that licenses should not be issued to certain members based on their faith or nationality? A. Yes, sir.

Mr. WILLIAMS: We object to that as leading. That is the limit on a leading question.

Q. Please state to the best of your recollection what, if anything, was said in that connection by Mr. Dyer. A. Mr. Dyer remarked to me on a number of different occasions that there would not be any room in the moving picture business for the Jews, if they could prevent it, the Edison Company as well as the Motion Picture Patents Company. 3

Q. Did any of the other organizers of the Patents Company at any time make the same statement to you? A. In conversations with Mr. Spoor and Mr. Selig, that was frequently discussed. I asked them what they were going to do with Mr. Lubin and Mr. Selig, thinking, as I did, that Mr. Selig was of the Jewish faith. They said they were going to dispose of Lubin in their own way, that is, that Mr. Lubin would be disposed of eventually, but they did not know just exactly how it was to be done. 4

The EXAMINER: The hearing is adjourned until to-morrow morning at 10:30 A. M.

Thereupon, on this Tuesday, the 21st day of January, 1913, the hearing in this case is adjourned to Wednesday, January 22nd, 1913, at the Hotel McAlpin.

1

IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,  
Petitioner,

v.

2 MOTION PICTURE PATENTS CO., and others,  
Defendants.

No. 889

Sept. Sess., 1912.

New York City, January 22, 1913.

Pursuant to adjournment the hearing was resumed at 10:30 o'clock A. M., on this January 22nd, 1913, at the Hotel McAlpin, New York City.

3

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General; JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.

4

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Mr. DWIGHT MACDONALD, appearing for Mr. Rowland.

Mr. GROSVENOR: There should have been a state-



ment in the record that the cross examination of Mr. Harry N. Marvin was waived. 1

Mr. WILLIS: Yes; that may be noted.

Thereupon, WILLIAM PELZER, previously sworn, resumed the stand for further examination:

Direct examination (continued) by Mr. GROSVENOR:

Q. Mr. Pelzer, when you were last on the stand you were requested to produce certain papers and statements. Will you now give to me, stating on the record, what you have produced? A. I produce first, a list of exchanges, from whom purchases were made up to June 23rd, 1910. 2

The witness produces this list in response to the request of counsel for the Government at page 262 of the record.

The Witness: This is a list of exchanges referred to in the minutes, as I understand; it is not the identical list, but a list made from the book. The list referred to in the minutes I could not find.

The list headed "List of Exchanges from Whom Purchases Were Made up to June 23rd, 1910," and marked "A" is as follows: 3

### "A"

#### LIST OF EXCHANGES FROM WHOM PURCHASES WERE MADE UP TO JUNE 23, 1910.

Date Taken	Possession Of.	Name of Exchange	Place	
June 6, 1910	Lubin Film Service Co.,	Philadelphia, Pa.		4
June 6, 1910	Kleine Optical Company,	New York City.		
June 6, 1910	Kleine Optical Company,	Chicago, Ill.		
June 13, 1910	Howard Moving Picture Co.,	Boston, Mass		
June 13, 1910	Kleine Optical Company,	Boston, Mass.		

By Mr. GROSVENOR:

Q. What have you next? A. I next produce a state-

1 ment of the net profits for the years 1910, and 1911, and I am unable to give any statement of the net profits for the year 1912, since the books have not advanced far enough for 1912 to permit of that being calculated.

The statement referred to and produced by the witness is entitled "Statement of Net Profits of General Film Company," and marked "B," is as follows:

2

**"B"**

STATEMENT OF NET PROFITS OF GENERAL FILM CO.

June 6, 1910 to December 31,

1910	\$ 160,616.15	
Year 1911	1,118,226.42	\$1,278,842.57

\_\_\_\_\_\*

\*Books not closed. No advance figures.

3

The Witness: I next produce a statement of dividends paid on preferred and common stock for the calendar years, 1910, 1911 and 1912.

Q. Of the General Film Company? A. Yes.

Q. All of those statements refer to the General Film Company? A. Yes.

4

(The statement referred to and produced by the witness is entitled "Statement of Dividends paid on Preferred and Common Stock of General Film Company," and marked "C," is as follows):

"C"

1

STATEMENT OF DIVIDENDS PAID ON PREFERRED AND COMMON  
STOCK OF GENERAL FILM COMPANY.

## Preferred Stock

Out of net earnings, Dec. 31, 1910, 7% .	\$13,313.21
Out of net earnings, Dec. 31, 1911, 7% .	47,083.44
Out of net earnings, Dec. 31, 1912, 7% .	55,713.00
	<hr/>
	\$116,109.65

2

## Common Stock.

Out of net earnings, Dec. 31, 1910, 12%	12,000.00
Out of net earnings, Dec. 31, 1911, 12%	12,000.00
Out of net earnings, Dec. 31, 1912, 12%	12,000.00
	<hr/>
	36,000.00

Total .....\$152,109.65

The Witness: I next produce a statement of undivided net profits of General Film Company remaining after payment of dividends on preferred and common stock.

3

(The statement referred to and produced by the witness is entitled "Statement of Undivided Net Profits of General Film Company Remaining after payment of Dividends on Preferred and Common Stock," and marked "D," is as follows):

4



1

“D.”

STATEMENT OF UNDIVIDED NET PROFITS OF GENERAL FILM  
COMPANY REMAINING AFTER PAYMENT OF DIVIDENDS  
ON PREFERRED AND COMMON STOCK.

Net earnings, June 6, 1910, to  
Dec. 31, 1910.....\$ 160,616.15  
Net earnings, year 1911..... 1,118,226.42

---

1,278,842.57

2

Less:—

Preferred Dividends,  
years 1910 and 1911.\$60,396.65

Common Dividends,  
years 1910 and 1911. 24,000.00

---

84,396.65

---

\$1,194,445.92

Less:—

Unpaid Dividends .....4,002.83

3

---

Available for distribution.... \$1,190,443.09

As distributed:—

Net profits, 1910.....\$ 134,863.11

Net profits, 1911..... 1,055,579.98

---

\$1,190,443.09

Amounts paid ..... 979,327.06

---

Balance unpaid .....\$ 211,116.03

4

The Witness: Now, you also wished to know the amount of preferred stock and the deferred cash payments paid for the Waters Canadian Exchanges. That was preferred stock, \$36,800, and deferred cash payments \$73,900, for five Canadian Exchanges.

Q. Yes, what else have you? A. You also asked for the authorization to purchase from exchanges. The only authorization I find is the resolution in the Directors' meeting of May 25, 1910; I can find nothing else in the office in the way of an authorization.

Q. What else have you produced? A. That is all I have

produced in the way of papers. If you want some other explanations of what I have not produced, I will make them.

Q. Referring to your last answers, Mr. Pelzer, in regard to the authorization, and your statement that the only authorization you can find is that contained in the minutes of May 25, 1910, I direct your attention again to the statement in the minutes of October 11, 1910, printed in the record at page 266, in which these sentences occur: "Payments Authorized for Exchanges owned October 10, Stock \$591,400, cash \$1,483,200. Total payments authorized for all exchanges in entire country, stock, \$988,800, cash \$2,480,000."

Now, I want you to find out when the authorization was given to name that figure. Were you able to find any such report? A. I was not.

Q. Did you look up the records of the Executive Committee? A. I made inquiries of the Secretary, of the President and of Mr. Berst and Mr. Rock, and was advised by each that they knew of no minutes of the Executive Committee prior to those that I had produced the other day.

Q. That is prior to June, 1912? A. Prior to June 20, 1912.

Q. Have they kept any memoranda or reports of the amounts— A. (Interrupting): No—

Q. (Continuing):—expended, or of their negotiations with the different exchanges, or of the business done by them prior to June, 1912? A. None that they could find; I asked them if they had any records of any kind, and they told me they had none. Mr. Smith, who was a member of the Executive Committee, is away, and I could not reach him.

Q. Then as a matter of fact you can find no record of any character applying to the period of time in which the General Film Company was expanding and buying out the rental exchanges? A. No, not any records of the Executive Committee.

Q. And the Executive Committee was the committee authorized by the General Film Company to conduct the negotiations and purchases of the exchanges? A. It was.

Q. Did you ask the members of the Executive Committee as to that authorization? A. Yes.

Q. What did they say? A. They could not recall it.

1 Q. Did you ask them how that figure appeared in the minutes as a specific figure, or figures? A. I didn't ask that specific question, no.

Q. Or how that figure was determined upon? A. No, I did not ask that question.

Q. As the amount that was authorized for the purchase of those exchanges? A. No, I didn't ask that question.

2 Q. Mr. Pelzer, when the General Film Company was formed, how much common stock was issued? A. Actually issued, I think originally there was either five, or 105 shares, and subsequently the balance of the one thousand shares was issued.

Q. What amount of common stock has been issued? A. 1,000 shares.

Q. That is \$100,000? A. Yes, sir.

Q. That was all issued for cash? A. Yes, sir.

Q. How much of the preferred stock has been issued? A. Complete— 7959 shares.

Q. That is \$795,000? A. Yes, sir.

3 Q. And that had been issued to exchanges in part payment of properties acquired? A. Except for a few shares which were issued for cash. I think there were eleven shares for cash.

Q. The General Film Company has no bonded indebtedness? A. No, sir, outside of the deferred cash payments that might be so considered.

Q. What did the General Film Company expend in acquiring these fifty-seven exchanges? A. Do you mean in cash, or in cash and stock?

4 Q. In cash, leaving out the stock, you have named the stock figures? A. I cannot give you the exact amount, but it is in the neighborhood of \$1,200,000.

Q. A large part of this \$1,200,000 is in deferred payments, isn't it? A. There were deferred payments that have been met, and the balance is something over \$900,000, to be paid.

Q. To be paid? A. Yes, sir, in approximately two and one-half years.

Q. That is to say, the General Film Company has paid out \$1,200,000 in cash for the exchanges acquired, and now owes about \$900,000 on its purchases? A. Yes, over \$900,000.



Q. And this \$900,000 is represented by notes running over a period of two and a half years from to-day? A. No notes were issued; payments were provided for by contract. 1

Q. That is to say, the General Film Company under its contracts on purchases of the exchanges paid so much cash, and then agreed to pay the deferred payments running over a period of several years? A. Yes, sir.

Q. Has the General Film Company been required to borrow money at any time in order to make these payments for the exchanges? 2

Mr. CALDWELL: Objected to as irrelevant and incompetent.

A. I believe not; in fact I never heard of such a thing.

Q. In other words, the exchanges purchased have been paid for out of the earnings of the General Film Company?

A. Yes, sir.

Q. And the \$1,200,000 you referred to, which has been paid by the General Film Company as part payment for the exchanges, has all been paid out of the earnings of the General Film Company? A. Yes, sir. 3

Q. And in the same manner you expect to pay the other \$900,000 out of earnings without borrowing money in the period covered by the different payments? A. Yes, sir.

Q. Then under the plan the General Film Company expects to pay for all of these fifty-seven exchanges out of profits within a period of three or four years from the organization of the General Film Company and without borrowing any money? A. Within a period of five years.

Q. Without borrowing any money? A. Yes, sir.

Q. This statement of the net profits of the General Film Company for the year 1911, states that the profits for that year were \$1,118,226.42. Does that figure include amounts paid out by the General Film Company on these deferred payments? Do you understand my question? A. Yes, I understand the question. No, it does not. 4

Q. Then there should be added to that figure— A. (Interrupting): At least I don't think it does. I am not familiar with the books for that period, and those figures were taken from the books, and I believe it does not include that item.

1 Q. Then to that figure, \$1,118,226.42, there should be added, in order to arrive at the true net profits, the amounts expended in the year 1911 by the General Film Company in making these different payments? A. Well—

Q. Now, I asked you, Mr. Pelzer, to produce a statement of the net profits of the General Film Company and this paper which I hold purports to be that statement—do you think that a statement of net profits of a company is fairly made when that statement omits sums paid out from earnings for properties acquired? A. I do not get what you are driving at, Mr. Grosvenor.

2 Q. You have stated this figure \$1,118,226.00 is a statement which does not include payments of cash made by the General Film Company in the year 1911, on deferred payments. A. Yes, I believe that is so; I can't be positive. I don't look after that particular part of the business, but I believe it does not.

Q. Were these deferred payments paid from, or paid out of the net profits for the year 1911? A. They were paid out of the earnings.

3 Q. Well, should not a statement of net profits for that year, in order to be accurate and properly made, should it not include what you have paid out of earnings in order to acquire other properties?

Mr. CALDWELL: Objected to as calling for the opinion of the witness.

A. I think that is largely a question of bookkeeping and the question of the sort of a statement you want; if you want that figure I can furnish it.

4 Q. How much was paid out of the earnings of the General Film Company in the year 1911, on these deferred payments? A. I could not say offhand, but I could get the information.

Q. It amounts to several hundreds of thousands of dollars? A. I would not undertake to say; it might be more, and it might not be that much.

Q. Mr. Pelzer, I will ask you to supplement that statement, the statement which purports to be a statement of net profits, and bring in a statement showing the net profits accumulated by adding to it what you have paid out of

the earnings to take up these deferred payments? A. I will do so. 1

Q. And that should show the figures as to deferred payments separately from the figures you have given here? A. Yes, I will do so.

Q. The minutes of March 13, 1911, printed at page 291 of the record, authorizes the payments of dividends of seven per cent. on the preferred stock and a dividend of twelve per cent. on the common stock, and dividend notes to manufacturers for the remaining undivided profits. What dividend notes were issued to manufacturers for the remaining undivided profits in accordance with that resolution? A. No notes were issued. The payments were made in cash over an extended period, and as the statement shows there is still a balance due the manufacturers. 2

Q. This statement of dividends paid on preferred and common stock of the General Film Company which you have produced, gives the dividends on the preferred stock and the dividends on the common stock. It contains no statement relating to these cash payments that you have just now referred to. I wish you would supplement this statement of dividends, by a statement giving amounts of cash payments, the dates of the same, and the names of the manufacturers for the years 1910, 1911 and 1912. A. Which statement? 3

Q. Do you wish me to show you the statement to which I refer? A. Oh, I know which one you refer to.

Q. I refer to the paper which the Examiner has marked "C," and which is copied above in the record. You understand what I want? A. Yes, I understand what you want is information, or detail of the information given in the paper marked "D."

Q. Let us take up the paper marked "D" and see if we can get at it. On page 285 of the record in this case I asked you to show separately the dividends on the preferred stock, on the common stock, and such dividends as were given in the way of dividend notes to manufacturers, showing the total amounts paid as well as the rates. These statements do not show the amounts paid to the manufacturers, outside of the common and preferred dividends? A. The statement marked "D" shows the amounts paid to the manufacturers. 4

Q. Please point it out and show where it does? A. On



1 this statement marked "D" under the heading "As distributed; net profits, 1910, \$134,863.11."

Q. That refers to the common and preferred? A. No, it refers to the amounts paid to the manufacturers of the remaining undivided profits.

2 Q. Mr. Pelzer, I see that you have not got this matter straight yet. Let me explain again what I want. That statement "C" gives the dates and the amounts of dividends paid on certain dates. I want the same figures, giving the dates and the amounts paid in cash, which you stated was the manner of payment, although that resolution refers to notes—in the same way, giving in detail, and not in lump sums, but in detail for the dates, giving the separate years? A. I understand that, Mr. Grosvenor.

Q. And I want also the amounts paid separately to the different manufacturers. A. I understand what you want, but I wanted to make it clear that it applied to the statement that has been marked "D."

3 Q. Now, this statement marked "D," contains net earnings June 6, 1910, to December 31, 1910, \$160,616.15. The next figure is, net earnings, year 1911, \$1,118,226. The figure which you give as net earnings for the year 1911 is the same as the figure that you gave on the other statement as being the figure showing net profits of the General Film Company for the year 1911? A. They are intended to be the same figure.

Q. They are so intended? A. Yes, sir.

Q. And then you have not included among the net earnings for the year 1911, the amounts that you paid, or the General Film Company paid, on these deferred payments?

A. No, sir, that money had been paid out, and was not there to be distributed in the shape of dividends.

4 Q. Well, it was paid out of gross earnings, was it not? A. Yes, paid out of gross earnings.

Q. Now, I wish you would produce a statement showing gross earnings for the year 1910, and 1911 and 1912? A. For those three years?

Q. Yes. A. I doubt if I can give it to you for 1912, but I will bring it for 1910 and 1911.

Q. Now, going on with this statement ("D"), you give again the figures showing your preferred dividends and common dividends for the years 1910 and 1911, and then show

“As distributed: net profits 1911, \$1,055,579.” How were these profits that you show by this figure “\$1,055,000” distributed as net profits? Were those the cash payments? A. No, that is the total amount that the manufacturers were entitled to under the contract that was distributed to their credit on the books under the payments \$979,327.06, and was made on account of that item, or on account of that distribution. 1

Q. Then the amount that the manufacturers received in the year 1911, was \$979,000, in cash payments? A. Yes.

Q. Now, you understand that I want these figures given in detail? A. You want them separately. 2

Q. And the dates of the payments? A. Yes, I understand exactly what you want.

Q. Received by each manufacturer? A. Yes; I didn't put it in that form, because you simply asked for what I understood was the totals.

Q. Now, if you will look at my request, on page 285 of the record, and then take it with those statements, I think it will be clear. A. All right.

Q. Does the General Film Company own stock in any other companies? A. No, sir.

Q. Does it have a Canadian branch? A. It has several Canadian branches. 3

Q. Are they owned by the same General Film Company? A. Yes, sir.

Q. Of Maine? A. Yes, sir.

Q. I wish, Mr. Pelzer, you would also produce a copy of the General Film Company's contract with exhibitors, the general form of contract. A. I do not believe that there is such a form of contract.

Q. The General Film Company limits or restricts its customers to the exhibitors licensed by the Patents Company; is not that correct? A. Well, we have no agreement that I know of. 4

Q. I didn't ask you about any agreement, I said the General Film Company limits its customers to the exhibitors licensed by the Patents Company? A. Oh, I misunderstood your question; yes, sir.

Q. Then the General Film Company declines to distribute films to any exhibitor after the General Film Company has received notice from the Patents Company that the license of the exhibitor has been cancelled? A. They are not per-

1   mitted to, unless they want to have their own license cancelled.

Q. You are not permitted to? A. No, sir, not under our license.

Q. Then the General Film Company stops distributing films to any exhibitor after it has received notice from the Patents Company that the exhibitor's license has been cancelled? A. Yes, sir.

Q. You are Secretary of the Patents Company as well as Treasurer of the General Film Company? A. Yes, sir.

2   Q. I wish you would produce a statement, or furnish a list of all the theatres whose licenses have been cancelled by the Patents Company, and that list should give the dates of cancellations and the locations of the theatres— A. How soon do you want it?

Q. Well, you have all that sort of matter tabulated at the Patents Company office? A. Why it would take months to get that out, Mr. Grosvenor.

3   Q. Do you mean there have been so many theatres whose licenses have been cancelled? A. Well, theatres are changing constantly of their own volition, from one class of theatre to another, as well as being cancelled for violation.

Q. Now, I show you a card—a pink card—let me ask you if that is a notice sent out by the Patents Company? A. That appears to be one of the forms sent out by the Patents Company.

Mr. GROSVENOR: I offer the pink card entitled "Notice to Suspend Service" and marked Petitioner's Exhibit No. 88, in evidence. It reads as follows:



**Petitioner's Exhibit No. 88.**

1

NOTICE TO SUSPEND SERVICE.

COLLEGE THEATRE, 22718  
1039 Myrtle Ave.,  
Brooklyn, N. Y.  
Summer Amus. Co.

To Exchanges:

We hereby notify you not to supply licensed service to the above theatre without notice from us.

2

Motion Picture Patents Company.

New York, N. Y.

Nov. 16, 1911

Form 261. 1M. 11-11

(Back)

GREATER N. Y. FILM RENTAL CO.

116 E. 14th St.,

New York City. X32

By Mr. GROSVENOR:

Q. I show you another pink card, and ask you if that is a card issued by your company, that is the Patents Company? A. It looks like one. 3

Q. Well, is it one? A. I believe it is.

Mr. GROSVENOR: I offer this card, which has been marked Petitioner's Exhibit No. 89, and is entitled "Notice to Suspend Service," in evidence. It reads as follows:

**Petitioner's Exhibit No. 89.**

NOTICE TO SUSPEND SERVICE.

4

PARK THEATRE, 19750  
451 E. 169th St.,  
New York City.  
Frank White.

To Exchanges:

The license for the use of a projecting machine in the above theatre has been cancelled for exhibiting unlicensed

- 1 motion pictures. Do not supply service for use in this theatre without notice from us.

New York, N. Y.,

Motion Picture Patents Company.

Nov. 1, 1912.

Form 253. Rev. 1

(Back)

GREATER N. Y. FILM RENTAL CO.,

116 E. 14th St.,

New York City. X32

- 2 Mr. WILLIS: Do you intend for the printing on the back of it to be a part of the record?

Mr. GROSVENOR: The whole of it. The whole of the card, and everything on it. I will ask him some questions about it.

By Mr. GROSVENOR:

- 3 Q. Mr. Pelzer, referring to the card just introduced, numbered Exhibit 88, upon this card is printed on the top these words, "Notice to Suspend Service," and then follows the name of the theatre, "College Theatre," and "Brooklyn, N. Y.," printed in typewriting, and then in printing these words, "To Exchanges: We hereby notify you not to supply licensed service to the above theatres without notice from us. Motion Picture Patents Company. New York, N. Y.," and then there is printed on the obverse side, "Greater N. Y. Film Rental Company, New York City." Now, this pink card has a puncture, or a round hole at the bottom, similar to holes in cards that are filed in an index system and it also has a number on it, "22718" at the top, that number being in typewriting. Are not these notices, or at least one copy of each notice  
4 that you send out, and mind, I am addressing you now, not as a General Film Company officer, but as the Patents Company Secretary—is not a copy of each one of these notices kept, so that you have them together in a box or a drawer, as would seem to be required by the style and type of the card? A. I think so.

Q. What does that number "22718"—what does that stand for? A. The exhibitor's number.

Q. Then under your indexing or system of cataloging are all the papers respecting that theatre in that number, or is the division of material according to the subject matter?

You understand the question? A. Yes. I am not certain just how those cards are arranged; that is a matter that I have nothing to do with and that comes under the jurisdiction of the Auditor of the Patents Company. 1

Q. This notice is a printed notice simply notifying the exchanges "Not to supply service to the above theatre without notice from us." Why does not that notice give some reason for the termination of the service? A. Well, I don't know, I don't think they ever did give them any reasons, except to indicate that the license has been cancelled.

Q. And thereafter, if any of the exchanges to whom this notice was sent supplied an exhibitor, or a theatre named on a card with service, the exchange's license was subject to cancellation? A. Yes, sir. 2

Q. Now, the card marked Exhibit No. 89, which is a pink card printed in the same way, except that the body of the card contains fuller language, it says: "To Exchanges: The license for the use of a projecting machine in the above theatre has been cancelled for exhibiting unlicensed motion pictures. Do not supply service for use in this theatre without notice from us." By the term "exhibiting unlicensed motion pictures," you mean exhibiting film of any manufacturer who is not licensed by the Patents Company? A. Yes, sir. 3

Q. And this also is a form of a common notice sent out by your company? A. Yes, sir.

Q. I wish you would give me a list of the theatres whose licenses have been cancelled in the years 1909, 1910, 1911 and 1912, for the reason that such theatres had exhibited film of manufacturers not belonging to the Patents Company licensees, such list to show the location of the theatres and the dates of cancellation. A. Yes, sir. 4

Q. Have there been a great many of such theatres? A. I could not say. As I said before, those are constantly changing, that notice you have there, for some theatres might have been reinstated two or three times since then. It is an endless job to go over all of those old cards.

Q. You terminated the service in this way and then sometimes reinstated the theatre? A. They have been reinstated, yes, very frequently.

Q. And then, if they committed the offense again you cancelled the license again? A. Yes, sir.

Q. And you repeat the process until you are sure it is either going to be wholly good, or will be wholly bad, is that



1 right? A. We hope that they will be good, and stay good; I have known them to change at least half a dozen times.

Q. I wish you would prepare that list, Mr. Pelzer, start your clerks upon it. A. I will start to work on it, and produce it as quickly as possible. Is it one list, or two separate lists, that you want, Mr. Grosvenor?

Q. There are two lists that I want, but I will ask you to begin the preparation of this list which I have last described. A. Yes, sir.

Q. I ask you to begin that list first. A. Yes, sir.

2 Q. I wish you would also prepare a list of all theatres whose names have been printed and issued by you to the rental exchanges upon this blank form (Exhibit No. 88), which directs rental exchanges to cancel service, the notice giving no reason for such direction. A. Well, I understood that was the list you asked for previous to this one, on this other card, am I correct?

Q. Suppose, for the present, you confine yourself to these two lists I have last described? A. That (indicating) and this (indicating) you mean?

3 Q. "That" and "this," Mr. Pelzer, does not mean anything on the record, but in order to make it clear again, I will say that the two lists that I am asking you to begin to prepare at once, are, first, a list of all theatres whose licenses have been cancelled for the reasons stated in the card which is Exhibit 89, that is, for using what you call "unlicensed film," and the second list which I ask you to begin preparing now is a list of theatres whose names have appeared upon this blank form "Exhibit 88." A. Yes. will you let me look at that form?

4 Q. Yes, which states no reason for the cancellation. A. Yes, sir.

Q. Then, I wish you would also prepare a list giving the names of all owners of theatres or exhibitors or persons desiring to enter upon the exhibiting business whom you have refused to grant licenses to. Do you understand the question? A. I understand the question, but I am trying to figure out whether it is possible to make such a list.

Q. Then, I wish you would prepare a list of all exchanges and of all theatres, the list giving the names of the exchanges and theatres separately, which theatres and exchanges have been fined for some cause or other by the Patents Company and also showing the amounts of fines

imposed. You understand my question as a request, and you will prepare such list? A. Yes, I will prepare such a statement. 1

Q. Mr. Pelzer, certain requests were made of Mr. Marvin, who is the President of your company. You will please charge yourself as Secretary of the company with the responsibility of producing these papers which have been asked for on the record. You had better look through the record and consult with your counsel so that you may expedite the production of those papers.

Mr. WILLIS: They have been prepared and we will produce them. 2

Q. Is the General Film Company engaged in the importation of film? A. No, sir.

Q. Does it import any negatives manufactured abroad, or printed abroad? A. I do not know of any case so far where it has done so.

Q. Does it import any positives? A. No, sir.

Q. What becomes of the foreign films that Kleine imports? A. Kleine furnishes the motion picture film to the General Film Company, but the General Film Company does not import direct. 3

Q. It acts simply as middle man? A. Yes, as between the importer and the exhibitor.

Q. Does the General Film Company handle any films except those brought out by the Patents Company licensees? A. It will handle any film licensed by the Patents Company.

Q. I didn't ask you that, Mr. Pelzer. I said, does the General Film Company handle any film brought out by anybody that is not licensed by the Patents Company? A. No, sir. Your question sounds different to me now than it did before is the reason I stated it as I did. 4

Q. Who is the Auditor of the General Film Company, Mr. Pelzer? A. Mr. F. Hawley—oh, no, of the General Film Company, Mr. W. M. Gulick.

Q. Who is the Auditor of the Patents Company? A. Mr. F. Hawley.

Q. There is one more thing I wish to ask you to get. I want you to please produce the several agreements which the Patents Company entered into with Gaumont. I think

- 1 there were a number of agreements entered into in the year 1909 or 1908, all agreements with Gaumont, or Gaumont's representatives? A. Yes, sir.

Mr. GROSVENOR: I am through with your examination for the present Mr. Pelzer, and I ask that any cross examination of the witness (Mr. Pelzer) be deferred until the statements are presented which he has been requested to prepare.

- 2 Thereupon WILLIAM H. SWANSON resumed the stand for further examination.

Direct examination (continued) by Mr. GROSVENOR:

Q. Mr. Swanson, George Kleine, in the year 1908, was importing a large number of foreign films, is not that correct? A. I purchased a great variety of foreign films from him.

- 3 Q. What foreign manufacture of films did you purchase from Kleine in the year 1908, what names can you remember? A. It is quite difficult for me to say what names particularly: I should say Cricks & Martin; Warwick; Gaumont; Pathe Freres and Theophelo, Pathe, Urban, and quite a number of others. I recollect that at that particular time frequently foreign manufacturers did not have any identification on their film, and it would be difficult to say who made them.

- Q. That is Gaumont made it for several manufacturers? A. I would not say as to that; but it was not altogether customary at that time for manufacturers to put out film with any particular marking on the film; it is just in recent years that I recall that such things as sub-titles and announcement titles have been put on any films.

4 Q. After the Patents Company was formed, did Kleine continue to import these different kinds of films, or only from some of the foreign makers? A. After the Patents Company was formed he only advertised and sold, so far as I know, the Urban Eclipse and the Gaumont film, but afterwards dropped the Gaumont, or they dropped him, I don't know which; and he took on what is termed Cines, making three releases a week—not more than three releases a week of combined brands that he handled.



Q. Before the formation of the Patents Company had  
Kleine used more than three releases a week of foreign films?

A. Quite a number more than that, yes, sir.

Q. Yesterday, I understood you to testify that you had  
sold outright a large number of projecting machines prior to  
the formation of the Patents Company, which you had bought  
in the manner stated in your testimony. State whether or  
not the royalty which was imposed on the exhibitors, and in  
respect to which you have also testified, applied to project-  
ing machines which had been sold prior to the date of the  
Patents Company. A. It applied to all machines regardless  
of the time they had been purchased by the owners.

Q. These machines before January, 1909, had been sold  
without any condition attached thereto? A. Yes, sir.

Q. To you by the manufacturer? A. I never heard of any  
condition.

Q. I show you page 125, of Volume 2, of the Moving Pic-  
ture World, purporting to give a list of members of the Film  
Service Association. Will you look that over and state  
whether that is a correct list of the association? A. For  
what period of time is this (referring to page 125 of Volume  
2, of the Moving Picture World)?

Q. This is in the issue of February 15, 1908. A. (After  
examining page requested) : That is a correct list.

Q. This list of members of the Film Service Association  
gives at the end the names of film manufacturers. Were  
those manufacturers there named also members of the Film  
Service Association? A. Yes, they were.

Mr. GROSVENOR: I ask that the list be marked as  
an exhibit and copied into the record.

The list referred to of the members of the Film  
Service Association, shown at page 125, Volume 2, of  
The Moving Picture World, is marked Petitioner's  
Exhibit No. 90, and is as follows:

### **Petitioner's Exhibit No. 90.**

#### **MEMBERS OF THE FILM SERVICE ASSOCIATION.**

##### **ALABAMA.**

Bailey Film Service, 116 21st St., Birmingham.

- 1 Southern Film Exchange, 193 N. 20th St., Birmingham.  
Theatre Film Supply Co., Birmingham.

### CALIFORNIA.

Clune Film Exchange, 727 So. Main St., Los Angeles.  
Miles Bros., 790 Turk St., San Francisco.  
Novelty Moving Picture Co., 876 Eddy St., San Francisco.  
Talley Film Exchange, Los Angeles.

### COLORADO.

- 2 Chicago Film Exchange, Denver.  
Kleine Optical Co., Denver.  
Little & Pratt, Charles Bldg., Denver.

### ILLINOIS.

#### CHICAGO.

- 3 American Film Service, 641 Am. Trust Bldg.  
Chicago Film Exchange, 120 East Randolph St.  
Eugene Cline, 59 Dearborn St.  
Globe Film Service, 79 Dearborn St.  
Inter-Ocean Film Exchange, 59 Dearborn St.  
Kleine Optical Co., 52 State St.  
Laemmle Film Service, 196 Lake St.  
National Film Rental Co., 62 N. Clark St.  
Royal Film Service, 253 La Salle St.  
Standard Film Exchange, 79 Dearborn St.  
W. H. Swanson & Co., 79 So. Clark St.  
Temple Film Co., Masonic Temple.  
4 Theater Film Service, 85 Dearborn St.  
20th Century Optiscope Co., 89 Dearborn St.  
Union Motion Picture Service Co., 43 Peck Court.  
U. S. Film Exchange, 59 Dearborn St.

### INDIANA.

Indianapolis Calcium Light & Film Exchange, 114 So. Capitol Ave.  
Kleine Optical Co., Indianapolis.

Laemmle Film Service, Evansville.  
 H. Lieber Co., Indianapolis.  
 Luther Day Service Co., Indianapolis.

1

## IOWA.

Kleine Optical Co., Des Moines.  
 Pittsburg Calc. Light & Film Co., Des Moines

## KANSAS CITY.

Yale Film Renting Co., 1116 Main St.  
 Charles M. Stebbins, 1028 Main St.  
 20th Century Optiscope Co.  
 C. T. Littlepage, Anthony, Kans.  
 20th Century Optiscope Co., Kansas City.

2

## LOUISIANA.

Birmingham Film Exchange, 316 St. Charles St., New Orleans.

Crescent City Film Exc., 1002 Canal St., New Orleans, La.  
 Imported Film Supply Co., New Orleans.

W. H. Swanson Dixie Film Co., 620 Commercial Pl., New Orleans.

World Film Exchange, 823 Union St., New Orleans.  
 Yale Film Renting Co., 220 Texas St., Shreveport.

3

## MASSACHUSETTS.

W. E. Green, 228 Tremont St., Boston.  
 F. J. Howard, 564 Washington St., Boston.  
 Miles Bros., Hub Theater, Boston.

4

## MICHIGAN.

Detroit Film Exchange, Newberry Bldg., Detroit.  
 A. J. Gillingham, Grand Rapids.  
 Michigan Film & Supply Co., Butler Bldg., Detroit.  
 National Film Co., 100 Griswold St., Detroit.



1

## MINNESOTA.

Eugene Cline & Co., Minneapolis.  
Northwestern Film Co., Minneapolis.  
Twin City Calcium & Stereopticon Co., 720 Hennepin Ave., Minneapolis.

## MISSOURI.

2

Eugene Cline & Co., 1021 Grand Ave., Kansas City.  
Eugene Cline & Co., St. Louis.  
O. T. Crawford, Gayety Theater, St. Louis.  
Miles Bros., St. Louis.  
Chas. M. Stebbins, 1028 Main St.  
Southern Film Exc., 1602 Market St., St. Louis.  
W. H. Swanson St. Louis Film Co., 813½ Chestnut St.,  
St. Louis.  
Yale Film Renting Co., 1116 Main St., Kansas City.

## NEW YORK.

3

Am. Film and Amusement Co., 97 Main St., Rochester.  
Buffalo Film Exchange, 13 Genesee St.  
Consolidated Film Exchange, State St., Rochester.  
Imperial Moving Picture Co., 301 River St., Troy.  
Mullin Film Service, Solar Bldg., Watertown.

## NEW YORK CITY.

4

Actograph Co., 50 Union Sq.  
Consolidated Film Exchange, 143 E. 23d St.  
Electrograph Co., 933 Third Ave.  
Empire Film Co., 106 Fulton St.  
Greater New York Film Rental Co., 24 Union Sq.  
Harstn & Co., 13 E. 14th St.  
Improved Film Supply Co., 148 Delancey St.  
Kinetograph Co., 41 E. 21st St.  
Kleine Optical Co., 662 Sixth Ave.  
Laemmle Film Service, 407 Flatiron Bldg.  
Miles Bros., 259 Sixth Ave.  
Peoples' Film Exchange, 126 University Pl.  
Vitagraph Co., 116 Nassau St.  
Alfred Weiss Film Exchange, 219 Sixth Ave.

## OHIO.

1

Cleveland Film Renting Exchange, Citizens' Bank Bldg.  
Eugene Cline & Co., 717 Superior Ave., Cleveland.  
Kent Film Service, 218 Nicholas Bldg., Toledo.  
Lake Shore Film Co., Superior Bldg., Cleveland.  
Ohio Film Exchange, 11 East Broad St., Columbus.  
Southern Film Exchange, 146 W. 5th St., Cincinnati.  
Toledo Film Exchange, Spitzer Arcade.

## PENNSYLVANIA.

2

Keystone Film and Supply Co., 6 Spooner Bldg., Harrisburg.

## PHILADELPHIA.

C. A. Calehuff, 4th and Green Sts.  
Electric Theater Supply Co.  
Kohl Film Rental Co., 913 Market St.  
S. Lubin, 21 So. 8th St.  
Miles Bros., 1319 Market St.  
L. M. Swaab, 338 Spruce St.

3

## PITTSBURG.

American Film Exchange, 605 Wabash Bldg.  
Columbia Film Exchange, 414 Ferguson Bldg.  
Duquesne Amusement Supply Co., Bakewell Bldg.  
Fort Pitt Film Supply Co., 808 House Office Bldg.  
Pennsylvania Film Co., 403 Lewis Block.  
Pittsburg Calcium Light & Film Co., 121 4th Ave.  
Wonderland Film Exchange, 410 Market St.

4

## TEXAS.

O. T. Crawford Film Exchange, El Paso.  
Southern Talking Machine Co., Dallas.  
J. D. Wheelan, 339 Main St., Dallas.

Theater Film Supply Co., Charlotte, N. C.  
Mitchell's Film Exchange, Little Rock, Ark.  
Western Film Exchange, Mathews Bldg., Milwaukee, Wis.  
Virginia Film Exchange, Norfolk, Va.

- 1      Laemmle Film Service, Omaha, Neb.  
         Chicago Film Exchange, Omaha, Neb.  
         Oklahoma Film Exchange, Oklahoma City.  
         Miles Bros., Portland, Ore.  
         Eugene Cline & Co., Salt Lake City, Utah.  
         Chicago Film Exchange, Seattle, Wash.  
         Edison Display Co., Seattle, Wash.  
         Kleine Optical Co., Seattle, Wash.

## CANADA.

- 2      L. E. Ouimet, 624 St. Catherine, E., Montreal.

## FILM MANUFACTURERS.

- Edison Mfg. Co., 10 Fifth Ave., New York.  
   Essanay Film Mfg. Co., Inc., 501 Wells St., Chicago, Ill.  
   Kalem Company, 131 W. 24th St., New York.  
   S. Lubin, 21 S. 8th St., Philadelphia, Pa.  
   Geo. Melies, 204 E. 38th St., New York.  
   Pathe Freres, 41 W. 25th St., New York.  
   Pathe Freres, 35 Randolph St., Chicago, Ill.
- 3      Selig Polyscope Co., 41 Peck Court, Chicago, Ill.  
         Vitagraph Co., 116 Nassau St., New York.

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Q. Now, of the list which has been just offered in evidence (Exhibit 90), the branches represented by Kleine Optical Company left the association shortly after the date here given, namely, February the 8th, 1908? A. Yes, they drew out a short time after that.

- 4      Q. And did some of the renters whose names are given on this page as not being members of the Film Service Association after that date, namely, February 8th, 1908, join the association? A. Some of that list joined the association and others that are not on that list joined it.

Q. Please indicate the names which are on this page (referring to Petitioner's Exhibit No. 90) who afterwards joined the association, and therefore should be included in the list of members of the association? A. Shiller Film Exchange, Imperial Moving Picture Company, New York Film Exchange, Cincinnati Film Exchange, Superior Film



Supply Company, and there are some here that when they did join changed their names, but there is H. H. Buckwalter, and I believe, Washington Film Exchange; there may be some slight lapse of memory in naming that complete list, but so far as I can recall those are the names as having joined, to the best of my recollection. 1

Q. State whether or not after February, 1908, the so-called Edison licensees, being manufacturers of film, had uniform contracts for the sale of films to the members of the Film Service Association. A. They did.

Q. I show you what appears to be a printed blank form of contract issued by the Edison Manufacturing Company, Orange, New Jersey, the same being undated, and ask you whether or not that is a copy of the form that was used sometime during the year 1908, and before the formation of the Patents Company? A. It is the same that was used at all times from the formation of the Film Association up until the time of the formation of the Motion Picture Patents Company. 2

Mr. GROSVENOR: I now offer in evidence as Petitioner's Exhibit No. 91, the printed blank form of contract issued by the Edison Manufacturing Company and being undated. 3

(Petitioner's Exhibit No. 91, is as follows):

1 **Petitioner's Exhibit No. 91.**

Form 565. 2-15-08.

Feb. 15, 1908.

**MOTION PICTURE FILMS.**

Prices, Discounts, Terms,  
Rental Schedule, Conditions of Sale and Agreement  
for the United States of America.

2 **SUBJECT TO CHANGE.**

Issued by

**EDISON MANUFACTURING COMPANY,**

Orange, N. J., U. S. A.

Trade-Mark  
Thomas A. Edison.

3 **PRICES OF LICENSED POSITIVE MOTION PICTURES**

List .....	12	cents per running foot				
Standing Order 1 print.....	11½	"	"	"	"	"
" " 2 prints .....	11	"	"	"	"	"
" " 3 prints .....	10½	"	"	"	"	"
" " 5 prints .....	10	"	"	"	"	"
" " 7 prints and over	9½	"	"	"	"	"

A purchaser may give a separate standing order for each of his offices.

4 All prints for each separate standing order will be shipped only to one office.

The price charged will be, for each office, according to the number of prints shipped to that office as per above.

**DISCOUNT**

The vendor will allow, on all the licensed positive motion pictures sold by vendor to the purchaser, prior to September

1st, 1908, a discount of 6% off the above prices for cash re-  
mitted on delivery of goods. 1

## TERMS

All shipments are made f. o. b. vendor's office at pur-  
chasers' risk. C. O. D. at the vendor's option.

## MINIMUM RENTAL SCHEDULE FOR LICENSED POSITIVE MOTION PICTURES

Price for Service	Weekly Contracts 2						
	1	2	3	4	5	6	7
When Changed	Reels	Reels	Reels	Reels	Reels	Reels	Reels
Once a week . . .	\$16	\$32	\$ 48	\$ 64	\$ 80	\$ 96	\$112
2 times a week . . .	20	40	60	80	100	120	140
3 times a week . . .	24	48	72	96	120	144	168
4 times a week . . .	28	56	84	112	140	168	196
5 times a week . . .	32	64	96	128	160	192	224
6 times a week . . .	36	72	108	144	180	216	252
Every Day . . . . .	40	80	120	160	200	240	280

Each reel must contain not more than eleven hundred  
(1100) feet. 3

In all contracts for less than 7 days, the price is \$6.00  
per day per reel.

Exhibitor to Pay Express Charges Both Ways.

## CONDITIONS OF SALE.

Licensed motion pictures manufactured under re-issued Let-  
ters Patent No. 12,192, dated January 12, 1904, are  
sold by Edison Manufacturing Company, hereinafter  
referred to as the Vendor, subject to the following  
conditions: 4

1. From the date of this agreement, the purchaser shall  
buy exclusively licensed motion pictures obtained from the  
vendor, or from a duly licensed manufacturer of such motion  
pictures, under said reissued Letters Patent.

2. The purchaser shall not sell nor exhibit licensed mo-  
tion pictures obtained from the vendor, but shall rent out



1    such motion pictures only to exhibitors, who shall exclusively exhibit licensed motion pictures obtained from the vendor or from a duly licensed manufacturer under said reissued Letters Patent, but in no case shall the exhibitor be permitted to sell or sub-let or loan or otherwise dispose of said licensed motion pictures.

2    3. The price to be paid by the purchaser to the vendor shall in no case be less than that defined in the foregoing schedule of prices, or in any other substitute schedule of prices which may be regularly adopted by the vendor, and of which notice shall be given to the purchaser hereafter.

3    4. To permit the purchaser to take advantage of any standing order price mentioned in said schedule, said standing order shall remain in force for not less than thirty (30) consecutive days. An increase in the number of prints to be furnished on a standing order shall be considered as a new standing order and must be in force for not less than thirty (30) consecutive days. Any standing order may be canceled or reduced by the purchaser on thirty (30) days' notice. Extra prints shall be furnished to the purchaser at the price which the purchaser is paying under his standing order, in force at the time the extra prints may be ordered.

5. The purchaser shall not sell, rent, or otherwise dispose of, either directly or indirectly, any of the vendor's licensed motion pictures (however the same shall have been obtained) to any persons, firms or corporations, or agents thereof, who may be engaged either directly or indirectly in selling or renting motion picture films.

4    6. The vendor shall not make or cause to be made or permit others to make, reproductions or so-called "duplicates" of any of the vendor's motion picture films, nor sell, rent, loan or otherwise dispose of or deal in such reproductions or "duplicates."

7. The purchaser shall not deliberately remove the vendor's trademark or tradename or title from any licensed motion picture film obtained from the vendor, nor permit others to do so, but in case any title is made by purchaser, the ven-

dor's name is to be placed thereon, provided, that in making any title by the purchaser, the vendor's trade-mark shall not be reproduced. 1

8. The purchaser shall return to the vendor (without receiving any payment therefor, except that the vendor shall pay transportation charges incident to the return of the same) on the first day of every month, commencing seven months from the first day of the month on which this agreement is executed, an equivalent amount of positive motion picture film in running feet (not purchased over twelve months before) and of the vendor's make, equal to the amount that was so purchased during the seventh month preceding the date of each such return, *with the exception however*, that where any such motion pictures are destroyed or lost in transportation or otherwise, and proof satisfactory to the vendor is furnished as to such destruction or loss, the vendor shall deduct the amount so destroyed or lost from the amount to be returned. 2

9. The purchaser shall not rent out licensed motion pictures below the minimum rental schedule above set forth, or any substitute or substitutes therefor, which may be regularly adopted by the vendor, and of which the purchaser shall have notice. 3

10. The purchaser shall not offer any inducements or concessions in the form of premiums or rebates or furnish to the exhibitor any supplies or merchandise by which, either directly or indirectly, the licensed motion pictures will in effect be rented at prices below said minimum rental schedule.

11. The purchaser shall not sell, rent, loan or otherwise dispose of any of the vendor's licensed motion pictures (however the same may have been obtained) to any person, firm or corporation in the exhibition business, who may have violated any of the terms or conditions imposed by the vendor through any of its other vendees and of which violation the present purchaser may have had notice. 4

12. The purchaser shall not rent out licensed motion pictures to any exhibitor unless a contract with said exhibitor (satisfactory in form to the vendor) is first exacted,

1 under which the exhibitor agrees to conform to all the conditions and stipulations of the present agreement applicable to the exhibitor; and in the case of an exhibitor who may operate more than a single place of exhibition, a similar contract shall be exacted in connection with each place so operated.

13. This agreement is personal to and non-transferable by the purchaser.

2 14. The vendor agrees that before making sales of any licensed motion pictures to any purchaser in the United States (not including its insular territorial possessions and Alaska) it will exact from each such purchaser, an agreement similar in terms to the present agreement, in order that all purchasers who may do business with the vendor will be placed in a position of exact equality.

3 15. It is understood and specifically covenanted by the purchaser that if the purchaser shall fail to faithfully keep and perform the foregoing terms and conditions of sale, or any of them, or shall fail to pay for any goods supplied by the vendor within the time prescribed for such payment, the vendor shall thereupon have the right to refuse to supply the purchaser with any further goods and shall also have the right to place the purchaser's name on an appropriate suspended list, which the vendor may publish and distribute to its customers, associates and the several licensed manufacturers under said reissued Letters Patent, and the vendor shall also have the right in such case to immediately terminate the present agreement, without prejudice to the  
4 have been suffered by such breach or non-compliance with the terms and conditions hereof by the purchaser.

16. It is understood that the terms and conditions of this agreement may be changed at the option of the vendor upon sixty (60) days' written notice to the purchaser, but no such change shall be effective and binding unless duly ratified by an officer of the vendor.



AGREEMENT.

1

In consideration of the sale of licensed motion pictures to me-us at net prices, to be agreed upon with the vendor, and which shall not be less than the prices mentioned in the foregoing Schedule of Prices, and after carefully reading the above Terms and Conditions of Sale, which together with said Schedule of Prices and said Minimum Rental Schedule are to be taken and read with and as a part of this Agreement, I-we Hereby Covenant and Agree with the vendor to conform with, and strictly adhere to, and be bound by the same, and to any and all future changes in or additions thereto, nor to do or suffer any of the acts or things thereby prohibited, and I-we also understand that this Agreement conveys no agency or exclusive rights of any character whatsoever; and it is expressly understood that I-we hereby agree that in case this Agreement is terminated by the vendor or in case of any violation thereof, or of the Terms or Conditions of sale, the vendor may place and publish my-our name in his removal or suspended list; I-we also agree and execute this Agreement with the distinct understanding that the same is a personal one and not transferable or assignable, and I-we hereby recognize and acknowledge the validity of said re-issued Letters Patents under which licensed motion pictures herein referred to are manufactured and sold.

2

3

Signed .....  
 Street and No.....  
 City ..... State .....  
 Date .....

Accepted for

EDISON MANUFACTURING COMPANY

4

By .....

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The Witness: I might say in correction of that statement that I am under the impression that this is a later form than the original form. I do not recall in the original form issued any schedule of rental prices.

1 Q. That is rental prices from the exchange to the exhibitor? A. Yes, it may be that I am wrong in that, though.

Q. In any event, the printed paragraphs of the contract are identical with the form used at other times? A. Yes, sir.

2 Mr. GROSVENOR: Now, I introduce in evidence at this point as **Petitioner's Exhibit No. 92**, the agreement between the Edison Company and the so-called Edison licensees, and I refer to Exhibit No. 1, of the answer of Thomas A. Edison, Incorporated, where the license agreement between the Edison Manufacturing Company and the Kalem Company, dated January 31st, 1908, is printed.

This exhibit need not be printed in the record, the copy thereof attached to said answer being referred to in place thereof.

3 Q. Mr. Swanson, in your testimony yesterday you stated that at the meeting early in January of the Rental Exchanges, where Mr. MacDonald made a speech, you gave to the best of your recollection what Mr. MacDonald said—you said that he stated (page 299 of the record) that it was “A ninety-five per cent. business proposition and a five per cent. legal.” Are you able to add anything upon that point, or state whether or not you were able to gather from the statement of Mr. MacDonald that in speaking of the “five per cent. legal,” he was referring to the patents end of it, or what was it? A. That phrase “ninety-five per cent. commercial and five per cent. legal” was expressed by Mr. Dyer at the meeting of the Film Service Association, in 4 Buffalo, and it was a very favored expression of his on all occasions after that when referring to the matter of the Edison licenses, and it became sort of a byword in business, “Ninety-five per cent. commercial and five per cent. legal,” and it was always understood in my mind that it referred, of course, to the patents, the five per cent. representing the value in the ratio of the value of things.

Q. State whether or not anything was said about this “five per cent. legal” making possible or lawful the “ninety-five per cent. commercial?” Do you recall anything about that? A. Mr. Dyer, in a long speech which he made to

the Film Service Association in Buffalo, pointed out specifically, to the best of my recollection, that the Edison patents did make the ninety-five per cent. commercial a possibility, inasmuch as they stated that the Edison patents would be the means of stopping others from doing business.

At 12.30 o'clock P. M. on this, January 22nd, 1913, the hearing was adjourned until 2.30 o'clock P. M., January 22nd, 1913.

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The hearing was resumed at the McAlpin Hotel, at 2:30 P. M., pursuant to adjournment.

Appearances the same as at the morning session.

Thereupon, LOUIS ROSENBLUH, the next witness called on behalf of the Petitioner, being first duly sworn by the Examiner, testified as follows:

Direct examination by Mr. GROSVENOR:

Q. Mr. Rosenbluh, what is your business? A. Manager of the Greater New York Film Rental Company.

Q. Is that a company engaged in the rental of motion picture films, and in supplying general supplies to exhibitors of motion picture films? A. Yes.

Q. It is located in New York City? A. Yes, sir.

Q. How long have you been connected with that company? A. Ever since its inception in 1907.

Q. You, in the years 1907 and 1908, bought motion picture films from manufacturers, and then the films were shipped from the plants, or places of business of those manufacturers to your offices in New York City? A. Yes, sir.

Q. Please name the manufacturers or producers of motion picture films from whom you purchased films in those years of 1907 and 1908, giving their respective places of doing business? A. The Vitagraph Company, located at 116 Nassau Street; Pathe Freres, office on 23rd Street.

Q. Where was their factory? A. In France. The Bio-



1 graph Company, known as the American Mutoscope and Biograph Company, 11 East 14th Street.

Q. Where was their plant? A. In New York. The Kalem Company, located on 21st Street, or 23rd Street. I don't remember just which. S. Lubin, Philadelphia, Selig Polyscope Company, of Chicago; George Kleine, of Chicago, and also later had a New York office, from which we did our business; P. L. Waters, representing the Edison Manufacturing Company, office at No. 41 East 21st Street; Messrs. Williams, Brown & Earle, of Philadelphia; Ullman, on 23rd Street, New York; Essanay Manufacturing Company, of Chicago; Miles Brothers, New York.

2 Q. These were all doing business in 1907 and 1908? A. Yes, sir.

Q. Were the prices of these different producers for the films which they produced the same, or did the manufacturers have different prices in selling their film to you? A. They each had various prices. Each manufacturer charged whatever he could get for his output, and all subjects from the various manufacturers were not the same price.

3 Q. There was competition as to prices? A. Yes. It all depended—if the subject was particularly well acted and of a good advertising value, they would expect a little more. If it was a scenic picture and something that did not cost them a great deal to produce, they were willing to sell it for a lower figure. It also depended upon the quantity of prints that you made arrangements to be supplied with. The price of one print was nine cents, two prints, eight and a half cents, three, eight cents, and if you wanted larger quantities, they gave you a special figure, and gave you the privilege of reselling them. Some people went into the business to buy five or six copies and to get it at a lower figure, and then supply different people at an advance of a quarter or half a cent to other people, where-  
4 as, if you went to each manufacturer to buy one print, you would have to pay a higher price. There was no restriction of any kind in the way of buying or selling prints that were bought at that time.

Q. Were you buying projecting machines from the manufacturers of such machines in the United States at that time? A. Yes, sir.

Q. Please name the manufacturers or importers of the machines doing business in the years 1907 and 1908? A. The Gaumont machine, Pathe machine, Selig Polyscope machine, Powers, Edison, and there were several other makes. Lubin had a machine on the market, Vitagraph had a machine on the market, but the most important machines used by our exchange were the Edison and Powers.

Q. Were these machines in those years 1907 and 1908, sold to you without restriction or condition attached to the sale? A. Yes, sir, absolutely no conditions.

Q. Did you sell them to the exhibitors in the same manner, without any conditions or restrictions attached to the sale? A. Yes, sir.

Q. Did you receive any notices from any of those manufacturers of projecting machines in those years that the other manufacturers were selling machines in violation of patent rights? A. No, sir.

Q. Or did they send you any notices that any of the machines were infringing machines? A. No, sir.

Q. Were there other exchanges in the City of New York, in the years 1907 and 1908, and up to the beginning of 1909, who were doing a rental exchange business in competition with you? A. Yes, sir.

Q. How many of such exchanges were there, say, about the end of the year 1908, approximately speaking, in New York City? A. I should judge about fifteen buying exchanges and a number of dealers who had a few films outright, which they bought direct from the manufacturers, using them for exhibition purposes in their own houses, and then were ready to enter into arrangements with others to use them for a certain amount.

Q. But there were about 15 that were doing a general rental business in films and projecting machines and other supplies used by an exhibitor? A. Yes, sir.

Q. The Patents Company was formed or entered upon business in the latter part of 1908, and the beginning of 1909. Did the Greater New York Film Rental Company, of which you were the manager, become one of the licensed exchanges? A. Yes, sir.

Q. Did you attend a meeting of the rental exchanges at the Imperial Hotel, early in January, at which the proposed licensed exchange agreement between the Patents Company

1 and the different rental exchanges was submitted? A. Yes, sir.

Q. How many of the exchanges doing business in New York at that time, that is, January, 1909, became licensed exchanges? A. Nine.

2 Q. I show you Exhibit No. 13, to refresh your recollection as to the names of the exchanges. Please state on the record the names as you recall them of the licensed exchanges in New York City? A. The Actograph Company, No. 50 Union Square; American Vitagraph Company, No. 116 Nassau Street; The Greater New York Film Rental Company, 24  
3 Union Square; Imperial Film Exchange, 44 West 28th Street; Kleine Optical Company, 662 Sixth Avenue; Miles Brothers, No. 259 Sixth Avenue; People's Film Exchange, 126 University Place; P. L. Waters, 41 East 21st Street, and Alfred Weiss Film Exchange, No. 219 Sixth Avenue.

Q. Please state in what way the method of doing business with the rental exchanges was changed from what it had been in 1908, by the adoption of the license exchange agreement? A. First, instead of purchasing the film outright, film was leased for a period, after which period, the amount equivalent to that purchased a year ago, was to be returned. Exhibitors were to pay a royalty on their projecting machines.

3 Q. (Interrupting): Now, before you take up the second point. By that I suppose you make a second change, in referring to exhibitors paying royalty. Now, take up this question or matter of leasing instead of purchasing. Before the adoption of the license exchange agreement, the method of doing business was for the rental exchange to buy the films outright from the different manufacturers. Is that correct? A. Yes, sir.

4 Q. Were you a member of the Film Service Association? A. Yes, sir.

Q. And had you concluded a license agreement with the different Edison licensees in the year 1908? A. We entered into a sales agreement.

Q. Under that agreement, that is, the Edison agreement of 1908, were the films sold to you? A. Yes, sir.

Q. There was in that agreement a provision providing that the films should be returned after a certain period, I believe six months? A. Yes, sir.

Q. Had that provision ever been enforced, so far as your exchange was concerned? A. No, sir. There was a notice



sent in the form of a bulletin signed by Mr. Dyer, waiving  
the clause asking for the return of the film.

Mr. CALDWELL: That is objected to upon the ground  
that it purports to give the contents of a writing.

Mr. GROSVENOR: Can't you give approximately the  
date of that notice?

The Witness: October 9, 1908. I believe there is a copy  
among my papers.

Q. Please state what effect this leasing provision has upon  
the business or method of doing business of a rental ex-  
change. A. It forces the exchange to use each and every  
film continuously, so as to be able to get its money back  
again if possible, within a period of time. It also makes it  
imperative to disregard the requests of certain exhibitors in  
certain localities to furnish them with any particular kind of  
picture, but to give them every picture that is released by  
manufacturers, in order to make each and every reel work  
within a given time. It also cuts the probabilities of making  
a profit for the exchange by the fact that it could not dis-  
pose of the film as it did heretofore, before the film was  
leased. The leasing arrangement was that only the man to  
whom it was shipped to was permitted to do business with  
that particular film.

Q. That is, the rental exchange could not turn the film  
over to another rental exchange for the use of its customers  
for a time? A. No, sir.

Q. Is that what you refer to? A. Yes, sir.

Q. What effect, if any, did it have on the rental exchanges  
gathering so-called libraries of films for use? A. It was prac-  
tically impossible to gather any kind of a library, because of  
certain pictures which would have been of some use at any  
time, such as scientific subjects or educational pictures, of  
which the age makes no difference—there was not any use of  
keeping those, they had to be returned, so that it never gave  
an opportunity to collect a library.

Q. Are the films impaired in quality, so that it is injurious  
to the business to use them after the expiration of six months,  
or are they in a condition to be used after they have been in  
use off and on for six months? A. It all depends upon the  
manner in which the film is handled, the carelessness of the  
operator, or if they are careless. The number of times that it

1 is run through a machine does not make any difference. A film can be run through a machine a thousand times, through the same machine, and still show no scratches, and it may run through the first time, where an operator has an imperfect machine, and have the film scratched, which mars the beauty of the picture.

Q. In what other respect was the manner of doing business on the part of the rental exchanges, made different by the license agreements from what it had been before 1908? You started to mention the royalties. Exhibitors' royalties. A. Therefore, an exchange could go all over the country to do its business. Each exchange would make up its own program, from the stock that he had on hand, and advertise its program to exhibitors at any distance from their exchange, there being no time limit or release date set, by which it would make the exhibitor acquainted with what the release date would be. Whereas a film was purchased formerly in the open market, it was new to all intents and purposes, no matter when it was bought from the manufacturer, so long as the exhibitor had not used it before, it was new to him. After the change by the license agreement it was advertised in the trade papers that release dates were the most important factors in conducting a business, and that each and every exhibitor was to demand as near to the release date, the picture, as he could get it. And that sort of brought the circle of the number of customers that could be supplied within the vicinity of where the exchange was located, and kept each and every man busy attending to those customers that he was doing business with. No two exchanges could supply one exhibitor.

Q. Before the license agreements, would the exhibitors obtain their films from different exchanges? A. Yes, sir.

Q. Under the license agreement, did you give the Patents Company a list of your customers? A. Yes, sir.

Q. And thereafter were you required to confine your rentals of films to your customers, and to give no films to the customers of any of the other exchanges? A. Yes, sir.

Q. Before the adoption of these license agreements, did you use the films wherever you saw fit? A. Yes, sir; wherever I could find a new account who had not used films printed on my program, he was willing to do business and

to use them, whatever I had, that he did not have, and so long as I kept my program continually replenished with additional subjects, he was satisfied to continue his business relations. 1

Q. And did you in the same way buy film wherever you could get it? A. Yes, sir.

Q. Now, in what manner has the business, so far as it relates to the obtaining of the films by the rental exchange, been changed by the license agreements? I am directing my question now to the source of supply. A. We were only to buy film from those manufacturers who had accepted the license from the Motion Picture Patents Company, and which makes were printed in their license agreement. 2

Q. Are you allowed to furnish your exhibitors to-day, color pictures, or the films of the Kinemacolor Company? A. No, they are not licensed film. We can only supply exclusively licensed film, and only to those that agree to use licensed film exclusively.

Q. How about special features, for instance, films of scientific subjects, or educational subjects that are produced outside of the Patents Company licensees? Can you distribute those to your exhibitors? A. No, sir, unless they are supplied by licensed manufacturers. 3

Q. How about 1907 and 1908? A. We could do anything we pleased. There was no restriction of any kind. Buy whatever we pleased and serve whoever we pleased.

Q. If one of your customers should display any of these films produced by the Patents Company licensee, what happens to the exhibitor? A. His license is cancelled by the Patents Company, if they know about it, and if we know about it, without the Patents Company's knowledge, we are supposed to report same to the Patents Company, and refuse to continue to serve this exhibitor. 4

Q. Do these rules regarding the non-use of such films, that is, of films produced by other than the Patents Company licensees, apply to all films produced, irrespective of the quality of the film?

Mr. WILLIS: Enter an objection to the question, as the license agreements speak for themselves and are preferable to the witness's construction thereon.



1           Mr. GROSVENOR: I am now asking these questions  
in order to show the course of business in the trade.

A. Yes, sir; irrespective of the quality, and irrespective of the subject matter depicted in that film.

Q. Is there demand on the part of the exhibitors, your customers, from time to time, for some of these outside films? A. Yes, sir.

2           Q. Take a special feature film, for example, "Pilgrims Progress." Was not there such a special film feature issued recently? A. Yes, sir. It is now being advertised in the trade papers.

Q. Where is that produced? A. I believe the Hostetter Utility Company is now advertising it. A New York concern.

Q. Was it produced over here or imported from abroad? A. Produced over here.

Q. And that is one of the kind that is excluded from the licensed exhibitors? A. Yes, sir.

3           Q. How about the color pictures of the Kinemacolor Company? Are they also excluded? A. They are not licensed. Anything that is not licensed is excluded.

Q. Before the formation of the Patents Company, was George Kleine importing a large number of films? A. Yes. There was not any particular limit to his importations. He was ready to supply almost any demand. I know that he could supply more than we could buy.

Q. You could get a new reel a day from him? A. A day. Even if we wanted two a day. He had any number on hand.

Q. After the Patents Company started business, how many reels of new matter could you get from him a week?

4           A. Two reels of Gaumont and one reel of Urban-Eclipse.

Q. And were you able to get certain kinds of foreign films that you had theretofore, that is, the product of certain other manufacturers? A. Not from George Kleine.

Q. If such other product was imported, were you able, being a licensed rental exchange, to distribute it to your exhibitors? A. Not unless it was imported by a licensed manufacturer. Pathe Freres imported some licensed films, in addition to that brought over by George Kleine.

Q. Did he import, after the formation of the Patents

Company, any of the film which, before the formation, Kleine had been importing? A. No, sir. 1

Q. Now, about these royalties. Did your exchange act as a collecting agency for the Patents Company to collect the exhibitors' royalties? A. Yes, sir. That is, we tried to collect it, but—

Q. (Interrupting): Was that done at your request, or at the Patents Company's request? A. At the Patents Company's request. We not only were requested, but ordered that unless we did successfully collect from each exhibitor, \$2, we could not continue the supply to that exhibitor, unless we received \$2 a week. They did not care how we got the \$2 as long as they got the \$2, and in order to be able to supply these exhibitors, we paid the \$2. 2

Q. Did the Patents Company ever pay you anything for collecting these \$2? A. No, they did not pay us anything. They found fault with us if we did not get it there on time.

Q. Some testimony has been given in this case that the collections by the rental exchanges of the \$2 a week, was allowed by the Patents Company as a favor to the rental exchanges. Did your company ever consider that arrangement a favor done by the Patents Company to you? A. No. Not only that we did not consider it a favor, but it put us into a very bad light with exhibitors, trying to exact— 3

Q. (Interrupting): How about the other rental exchanges in New York? You have followed their method of doing business, and you are familiar with their names? A. Yes, sir.

Q. Was this manner of collecting the \$2 requested, that they should do it instead of by the Patents Company, so far as you recollect? 4

Mr. CALDWELL: That question is objected to as incompetent.

A. No, the men that I knew in the business did not seek the privilege, and I know they did object among themselves to being told to do that, because they realized that they would have to pay the amount, in fact, that was discussed among the exchange men, that eventually it would

- 1 lead to the point where each exchange would have to pay the royalties.

Q. Before the formation of the Patents Company did the exhibitors ever pay any fee or royalty, or whatever it may be called, to the manufacturers, as far as you know? A. The exhibitors never had any direct dealings with the manufacturers. They considered the exchanges the people to do business with.

Q. Did they pay any royalties of any kind? A. No, sir.

- 2 Q. Do these royalties which have been imposed by the Patents Company, of \$2 a week, on the different exhibitors, do these apply to projecting machines which your company sold prior to January, 1909? A. Yes, sir.

Q. That is, the exhibitors who purchased these machines outright, without conditions, in the years 1907 and 1908, were obliged to pay after January 1st, 1909, the royalties upon those machines, is that right? A. Only those paid who wanted to use licensed films. Those who did not care whether or not licensed films were supplied to them, and they did not care to exhibit any licensed pictures, they could keep their machines, but they were not obliged to pay any royalties.

- 3 Q. Did they pay the royalties regardless of the fact whether the machine was bought before January, 1909, or after January, 1909? A. If we supplied them with film, we had to pay \$2. The exhibitors did not pay anything.

Q. Mr. Rosenbluh, you testified that in January, 1909, or February, 1909, there were about 9 rental exchanges licensed by the Patents Company? A. Yes, sir.

- 4 Q. How many of those rental exchanges are doing business to-day? A. The General Film Company is now operating 5 branches which formerly received licenses from the Patents Company, and the Greater New York Film Rental Company, are the only ones that are now left of those nine.

Q. That is, your company is the only one of the nine companies that is now doing business? A. Yes, sir.

Q. When did the General Film Company commence doing business in New York City. A. I should judge about June, 1910.

Q. Were licenses of any of the New York exchanges cancelled about that time? A. Yes, sir. There were two licenses cancelled. Miles Brothers, and the Imperial Film Exchange.



Q. Did the General Film Company about that time buy up others of the licensed exchanges in New York? 1

Mr. CALDWELL: That is objected to as incompetent.

A. P. L. Water's branch was taken over about July, 1910, and they were immediately followed, or a very short time afterwards, by George Kleine. And the Vitagraph Company was combined with the George Kleine office. A short time thereafter, the Weiss Exchange was taken over.

Q. By the Film Company? A. By the Film Company. 2  
And the People's Film Exchange was the last to be taken over, which was some time in August of 1911.

Q. In September of 1911, then, as I understand your testimony, yours was the only one of those licensed companies or exchanges that remained in business? A. Yes, sir.

Q. Who was the general manager of the General Film Company in September, 1911? A. Mr. P. L. Waters.

Q. Do you recall having any conversation with him in September, 1911? A. Yes, sir.

Q. Please state how many conversations took place, 3  
how you happened to see him, and all that was said by him and by you, to the best of your recollection?

Mr. CALDWELL: That question is objected to as incompetent, immaterial and irrelevant.

A. The General Film Company had moved into new quarters at No. 200 Fifth Avenue a short time before this, and Mr. Waters was on the wire talking to me. He asked me how I was getting along, and why I don't pay him a visit—they are located now at new quarters, something nicer than has been heretofore known in the exchange business, and to 4  
pay him a visit sometime. I told him I would be glad to take advantage of his invitation. I was going to take advantage of it in the very near future. I did go over about a day or two later, and we discussed the general conditions of the rental business. During the conversation, he said, "By the way, I suppose you know I had a conversation with Mr. Fox, with regard to the sale of his business to the General Film Company." I said I did not know—

Q. (Interrupting): Mr. Fox was the President of your

- 1 Company? A. I said I did not know what conversation he  
had, but Mr. Fox did tell me he had had a conversation with  
Mr. Waters, and Mr. Waters went on to outline what the con-  
versation was, and stated that he explained to Mr. Fox that  
it was about time that he made arrangements now to dispose  
of this business. The Greater New York Film Rental Com-  
pany was the only one that was left, with the exception of one  
small concern out West, with which he expected negotiations  
would be closed shortly, and that it was the proper time now  
if he expected to do anything at all, to enter into those nego-  
2 tiations, since he did not think that the Greater New York  
Film Rental Company would be able to hold out against a  
company like the General Film Company, which has such  
large resources—in fact he mentioned that it was a \$2,000,000  
corporation—against a small concern like ours, and we had  
absolutely no chance. And he told him that, and was telling  
me that now in all friendliness, that now was the time to dis-  
pose of it. I told him we were getting along fairly well down  
there, and if he could see his way clear to forgetting that we  
were in business, and let us alone, I personally would con-  
sider it a favor, and I did not see in any way where I affected  
3 their carrying out the methods of their business as they  
thought. We were doing our own business in our own way,  
and thought we would rather continue doing it in our own  
way rather than become one of the branches of the General  
Film Company. He said that he did not think that was pos-  
sible, since the Directors and men connected with the Gen-  
eral Film Company, had their plans laid for the exclusive  
control of the business of the United States, and they would  
not consider having us as a competitor, in fact, he thought  
that would be a very fine condition to be in, that he himself  
would have liked to be in such a position, that although he  
4 had accepted \$100,000 for the sale of his business, he would  
gladly repay that \$100,000 and give \$100,000 in addition for  
the advantage or privilege of having a license that could not  
be cancelled.

Q. He had owned one of the New York exchanges which  
had sold out to the General Film Company? A. Yes, sir.  
And he stated that he would not have sold either if it had not  
been for the fact that it was pointed out to him that it was  
to his advantage to sell with a clause in his license agreement  
which was revocable on fourteen days' notice, and after the

matter had been put to him in that light, he thought that it was advisable to accept the offer that was given to him, and in turn, he advised every man that asked his opinion, and he was willing to do the same for me, to advise me, to accept what money is offered. And then I thanked him for his information and left him. 1

Q. There was a clause in this license exchange agreement, between the rental exchanges and the Patents Company, which provided for the cancellation of the agreement on fourteen day's notice, the cancellation being without cause? A. Yes, sir. 2

Q. That was the clause which you understood him to be referring to? A. Yes, sir.

Q. Now, what next transpired in connection with this matter? A. About November fourteenth, a Mr. Braden, whom I knew to be connected with the Motion Picture Patents Company, having had several conversations with him at the office of the Patents Company, and across the wire, whom I knew to be of some authority in the Motion Picture Patents Company—announced himself—

Mr. WILLIS (Interrupting): Just one moment. I enter an objection to the witness' testimony with reference to what was said by Mr. Braden, unless the witness is able to show in what official capacity the gentleman represented the corporation to which he said he belonged. 3

Mr. GROSVENOR: That, I think, will appear as the testimony goes on. Will you read, kindly, what the witness has said?

(The stenographer repeats the answer of the witness.)

Q. He announced himself at your office? A. At our office. I asked him to step inside, and he took out an envelope from his pocket and he said, "I am sorry to be a messenger of sad news. I suppose that you won't like the contents." I opened the envelope and it contained a letter of the Motion Picture Patents Company, on its paper, or its letterhead, on which was Clause 19 of the License Agreement, and stated that they had taken the right under that clause to notify us of our 4



1 cancellation, which is to take place on December 4th, and after that date no film would be supplied to us.

Mr. CALDWELL: The witness' testimony as to the contents of the notice is objected to.

Q. That is December 4th, 1911? A. Yes, sir.

2 Q. I show you Exhibit No. 4 attached to the petition, which has already been proven in this case, and point to paragraph 19 of that exhibit, being a form of License Agreement between the Motion Picture Patents Company and the rental exchanges. Is that the paragraph to which you have reference? A. Yes, sir.

Q. Please state what, if anything, happened after this visit from Mr. Braden? A. I took the letter to Mr. Fox, and told him that we had received a present, and asked him—

Mr. WILLIS (Interrupting): Surely, we object to that. That is not competent.

3 The Witness (Continuing): Showed him the letter and asked him to read it.

Q. Please state whom of the Patents Company you saw, and what happened in connection with the license? A. Mr. Fox asked me to go over and see Mr. Waters, and find out from him what it all meant, and he told me he had a conversation with Mr. Waters—

Mr. WILLIS (Interrupting): The objection still avails?

Mr. GROSVENOR: Yes.

4 The Witness: Mr. Waters told him no such step would be taken with regard to the cancellation of the license, because he did not consider the sale of the business. To find out whether Waters knows anything about it. I did then go over to the office of the General Film Company, and there again did see Mr. Waters. Mr. Waters received me and asked me what he could do for me—

Mr. CALDWELL (Interrupting): Any conversation between the witness and Mr. Waters is objected to.

Q. Mr. Waters was the General Manager of the General Film Company? A. Yes, sir. 1

Q. And the conversation was at the offices of the General Film Company? A. At the offices of the General Film Company. I told him that we had received a letter which no doubt, he knew about, and was supposed to be the cancellation of the license of the Greater New York Film Rental Company. He said he did know something about it. He had heard that such a license was sent out—such a cancellation was sent out. I asked him what was the next step in the procedure. What it meant. Whether we could continue to do business under the arrangement, as my understanding was that with the cancellation of the license, they would discontinue the supply of the films, unless some other arrangement was entered into, and asked him—no doubt similar arrangements were carried out at some other exchanges—what the next step was to be, whether our license could not in some way be reinstated. He said, “Well, I told you that sometime ago when you asked me what was the best thing to do, I advised you, and I advised you right. You did not seem to take my advice, and I don’t know what else I can do for you now. However, Mr. Fox is a better man to handle the situation. You tell Fox to come over and have a talk with me, and I think we can somehow arrange this matter.” I went back to the office and told Mr. Fox of the conversation I had with Mr. Waters, and he said, “All right, I will take the matter up from now on,” and he did. 2

Q. Was anything said at your second interview with Mr. Waters about this other exchange which you have stated was mentioned as being in the West, and was still licensed? A. Yes, he did say that that exchange was no longer doing business independently. That it had been absorbed by the General Film Company. 3

Q. Thereafter, did your company take up with the General Film Company, the matter of the selling out and accepting the proposition of sale to the General Film Company? A. Mr. Fox was acting in that capacity, and he came back after he had spoken with Mr. Kennedy, and he told me that he had practically agreed to certain conditions, and those conditions were being prepared, and that they would reach the office within a few days. 4

- 1            Mr. CALDWELL: The witness' conversation with Mr. Fox last testified to is objected to.

Q. Did your company receive a notice from the Patents Company that its notice of cancellation had been revoked?  
 A. Yes, sir. The following morning, it was on a Saturday morning—Mr. Fox's conversation was on a Friday, and on Saturday morning, we received a letter from the Motion Picture Patents Company, which I opened, and the letter read that the cancellation was withdrawn.

- 2            Q. Was the sale of your company to the General Film Company successfully consummated? A. No, sir.

Q. Will you state whether or not you received any subsequent or later notice of the cancellation of the license, from the Patents Company? A. Yes, sir. We again received a similar letter like the first, cancelling the license, only changing the date, instead of December 4th, to December 25th.

- 3            Q. Before December 25th arrived you consulted counsel, and obtained an injunction from the Court, a temporary injunction, stopping the cancellation of the license? A. Yes, sir. Messrs. Rogers & Rogers were—

Mr. CALDWELL (Interrupting): That question is objected to.

The Witness (Continuing): Were successful in getting an injunction, under which injunction the manufacturers continued to supply the Greater New York Film Rental Company.

- 4            Q. Did you subsequently institute a suit in the United States Court, in order to protect what you deemed your rights in the matter, and to insure the delivery of the films to your company? A. Yes, sir.  
 Q. Did you obtain an injunction in that suit? A. Yes, sir.

Q. Mr. Rosenbluh, has the service you have received from the manufacturers since this notice of cancellation been as satisfactory as the service that your company received prior to September, 1911—how about the "special features?" A. We did not receive any special features from the manufacturers, although we applied for them.



Q. Please describe what a special feature is, so that it will appear on the record. A. Up to the period of 1911, special features were termed such pictures as were not among the regular releases of the manufacturers. Anything that they turned out in addition to the regular output, which each one was allotted, or had agreed to turn out, either four or five releases a week, they called special releases, such as the Hudson-Fulton Celebration, or Roosevelt's Landing in America, or the African Hunt of Roosevelt. Anything that they turned out, of topical subjects, they termed "special." They advertised the release of a "special" and asked for the order—

Q. (Interrupting) : Who? A. The manufacturers. Which the standing order did not include. Thereafter, the releases, know as "multiple releases," which consisted of two reels to a subject, or three reels to a subject, became very popular with the exhibitors.

Q. And were known as "specials?" A. And they termed those as "specials." Although previously they were given out among the regular releases. Whenever a manufacturer would make one of these long lengths he would turn it out, in his release day, on Monday, and Wednesday; he would turn out one part on Monday, and the second part, or part two, on Wednesday, thereby giving it in the regular releases. When they saw there was a great demand for these special reels, they began to term those as "specials" and then sold the exclusive rights to the General Film Company, and we could not get any of them.

Q. Was there a large demand on the part of your exhibitors for these subjects? A. Exceptionally large.

Q. And the obtaining of the films on the regular releases you were obtaining during this period, by virtue of the injunction of the Court? A. Yes, sir.

Q. But in spite of that, you were not getting these subjects? A. No, sir. I might say that the special features were supplied to exhibitors under a special arrangement which meant that if each exchange did not buy a "special," that exhibitors of one or more exchanges could apply to the exchange that did have these specials, and was permitted to be supplied under a special bulletin that was sent out, but our exhibitors, although they applied to the General Film Company for these particular subjects that I mentioned as being two and three reel releases, could not obtain them.

- 1 The managers replied that they had orders from the main office not to supply those to customers doing business with the Greater New York Film Rental Company.

Q. Let me see if I understand that. The rule under the license agreements is that a customer or a licensed exhibitor shall not get films from more than one rental exchange? A. Yes, sir.

Q. But that rule is varied in the case of "specials" and an exhibitor is allowed to get "specials" from other than his regular rental exchange, where his regular rental exchange does not supply those subjects? A. Yes, sir.

- 2 Q. You were not able to get these "specials?" A. No, sir.

Q. And you state your customers were unable to get them from the General Film Company. Is that correct? A. No, sir, they could not get them. They were told that if they made their arrangements for a complete supply, they could then be supplied with the "specials" also.

Mr. CALDWELL: That is objected to as hearsay.

- 3 Q. I show you an illustrated advertisement of the Kalem Company and ask you whether that is an advertisement of one of the special features to which you refer (handing paper to witness)? A. (Witness examining paper): Yes, sir. I might add that some of the companies, even now that we are getting some of these "specials," are still continuing to advertise in this form, that these "specials" can be obtained only through the General Film Company.

- 4 Q. You are referring to the words that appear on this circular which I show you, stating "Controlled exclusively by the General Film Company?" A. Yes, sir. And although the General Film Company did not advertise before this period any of their releases, they started in to advertise in the trade papers, large type and double headings, advertising the General Film Company special features.

Mr. GROSVENOR: I offer that in evidence.

The paper is marked Petitioner's Exhibit No. 93, and is as follows:

**Petitioner's Exhibit No. 93.**

1

Coming Monday, July 1st

TRAGEDY OF THE DESERT

Special Feature Production

In Two Reels

Controlled Exclusively by the General Film Company

(Cuts)

"Your People Shall Be My People Your God My God."

2

Cochran Marries the Arabian Girl Zenab

(Cuts)

The Temptress

Almost Persuaded to Return

We will supply you with photographs of these scenes  
8x10 inches in size, for 15 cts. each, postage prepaid.

KALEM COMPANY, 235 W. 23rd Street, New York, N. Y.

3

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Q. That gives the date July 1st. Is it July 1st, 1912? A. They started in a little before that. Yes, sir, July 1st, 1912. They started in some time in May.

Q. I show you a three foot illustrated advertisement of a Vitagraph production entitled "As You Like It." With the words at the bottom, "Released through the General Film Company." Is that another of the productions of which the General Film Company had the exclusive rental? A. Yes, sir.

4

Q. Mr. Rosenbluh, I think you have testified that your company was a member of the Film Service Association. Have I asked you that question? A. Yes, sir.

Q. It was a member? A. Yes, sir.

Q. During a period of what has been described as warfare between the Edison and the Biograph factions, you confined your purchases to the Edison licensees, in the year 1908? A. Yes, sir.

Q. Was there any advance in prices accomplished by



1 the Film Service Association or the Edison licensees in that time in the trade? A. Yes, sir, quite an increase.

Q. After the formation of the General Film Company and after it acquired these licensed exchanges in the City of New York, speaking from your observation of the business and the course of the prices, state whether or not there was any change in prices from the rental exchange to the exhibitors? A. There was a gradual increase in price.

Q. After the formation of the General Film Company? A. Yes, sir.

2 Q. About what did that aggregate? A. I should imagine about 40% increase.

Q. Did you have any talks with any of the organizers or any of the licensed manufacturers in regard to the formation of the General Film Company and its plans or purposes? A. I did have one conversation with Mr. Berst.

3 Q. When was that? A. About the time of the cancellation of the license; and I also had conversations from time to time with Mr. Rock of the Vitagraph Company, who used to meet with the rest of the exchange owners at social gatherings for the purpose of talking over trade conditions, and so forth. Mr. Rock used to express himself then as an exchange man, what the purpose of the General Film Company was, about the time that it was being organized. Mr. Berst, in a conversation with—

Mr. CALDWELL (Interrupting): Any conversations between the witness and Mr. Berst and Mr. Rock, or others, is objected to. It is understood without repeating it?

4 Mr. GROSVENOR: All right. I introduce the conversations in part as admissions on the part of those defendants.

Q. Mr. Berst, to whom you refer, is the Berst of Pathe Freres? A. Yes, sir.

Q. And the Rock to whom you refer, is of the Vitagraph Company? A. Yes, sir.

Q. Now, please go on. What did Mr. Berst first say in these conversations? A. Mr. Berst's statements were—I came over to see him, whether or not he could not arrange a meeting with Mr. Fox, who was anxious to get in touch

with him, and with Mr. Kennedy, to talk with regard to the  
cancellation of the license. 1

Q. To get that cancellation revoked? A. Yes. And during the time that I tried to get Mr. Fox on the 'phone, after Mr. Berst had consented to see Mr. Fox, whenever I could make a suitable appointment or arrangement, it took me about half an hour to locate Mr. Fox, not knowing where he was at that time, I had to try his house, and then one or two theatres before I could locate him. In the meantime, I sat conversing with Mr. Berst, and some of the points that were touched upon was the reason of the cancellation of the license. I asked him if he knew. He 2  
said, while there was not any particular reason, of course, the reason has been given, but he does not ascribe that to have been the actual reason—the main reason was that the Directors had received reports from the managers, through the branch managers—

Q. (Interrupting): Branch managers of whom? A. Of the General Film Company, that it was impossible to increase the prices of rentals satisfactorily so long as the Greater New York Rental Company was in the field. That when they attempted to increase the price for an exhibitor, invariably the exhibitor would say that if they did, since the Greater New York Film Rental Company has not increased its prices, they would go there to do their business, and rather than drive all the business our way, by which they were afraid the Greater New York Film Rental Company would get too much advantage of them, they decided not to increase the prices as they would otherwise have done if we had not been in the field; and Mr. Berst stated that under those conditions, it was against the interests of the General Film Company to allow us to be in the field in competition with the General Film Company. I told him 3  
then, that I did not make any effort to undercut prices, we were doing business in the same way that we had done heretofore; if the business came to us, we purchased film, for the reason to be able to supply them, and it was only natural that we should take them on, but we did not go out particularly undercutting any prices. He said, "Well, the General Film Company found it was necessary to get you out of the way, and you were offered a chance to come in with us, which Mr. Fox refused, and I don't know what I can do for him now. I am not a member of the Patents 4

1    Company. I am only a Director in the General Film Company.

Q. What, if anything, did Mr. Rock say at any conversations you had with him about the plans or purposes of the General Film Company? A. During the time that these meetings were had between Mr. Rock and the rest of the exchange men, each man tried to find out from Mr. Rock what the purpose was of the General Film Company.

Q. That is, after the General Film Company was formed and before it was started to do business? A. This was in the Spring of 1910. Before it started to do business.  
2    Some time in March. And Mr. Rock stated that the object was to see that the manufacturers get a better percentage of the profits of the business than they were then receiving. They thought that the exhibitors were making entirely too much money out of the business. That they were supplying the ammunition or the supply on which the exhibitor made his money, and he thought the exhibitor should divide his profit with the manufacturers. We then asked him as to what plan he thought was going to be used for that purpose. Well, he said, the plan had not been  
3    entirely decided upon, but one of the plans that they were discussing was to divide the profits of the exhibitor on a 50% basis. 50% of the receipts or 50% of the profits. I don't remember just how he had it figured out which would be the proper way of doing the business instead of as it was done at that time, that exhibitor could come in and dictate as to how much money he chose to spend for film service. About that time large theatres were beginning to open up, and he said that the profits of these large theatres were entirely too much. He could not see where they came to be entitled to get all these profits. The  
4    manufacturers were entitled to all the profits that were in the business. He even thought that the exchanges that were then in business were not entitled to as much profit as they were making.

Q. Do you recall having spoken to any of the other licensed manufacturers at any time in the years 1909, 1910 or 1911 with regard to the General Film Company's plans or purposes or in regard to the Patents Company? A. Mr. Waters—we always felt that he was a sort of representative of the Edison Manufacturing Company—



Mr. CALDWELL (Interrupting) : That question is objected to. 1

The Witness (Continuing) : Having had our business relations with Mr. Waters for the Edison Manufacturing Company prior to the time that they started to handle their films direct from their Orange office—and he was the man that we always looked to to give us inside information. The only information that he would give us at the time of the formation of the General Film Company, was that he was more interested in the man who would be the General Manager of the General Film Company than he was actually interested in the policy or the discussions of the plans that they carried out, or would carry out. It was rumored at that time that he was slated for the place, which he always tried to get out of, and said they were kidding him along, that he did not have the necessary influence behind him to get that position. Eventually, he did get it. 2

Q. Was there any change in the prices of projecting machines after the Patents Company was formed? A. Yes, sir, there was a material increase. The same machines that were sold theretofore for a much lower figure were then sold for \$195, by the Powers, and \$175 for the same machine by the Edison, and then they turned out a new model, changed the number of it, and increased the price of it to \$225. 3

Q. Were there some of the exchanges doing business in New York in 1909, the beginning of that year, that did not take out licenses from the Patents Company? A. There were three or four that did not come in. Not because they would not take, but because it was not offered to them. 4

Mr. CALDWELL: I move to strike out the last answer of the witness on the ground it is incompetent. 4

Q. What were those exchanges? A. There was Alfred Harstn, or Harstn & Company, the Empire Film Company, the Improved Film Company, and Gunby & Beck.

Q. Had they been members of the Film Service Association? A. Yes, sir.

Q. Did they continue in business in the Spring of 1909? A. Not for any length of time. I should judge they tried from what stock they had left, to continue their business for a short period, but then discontinued doing business.

1 Q. There were a large number of foreign films which were  
not controlled by the Patents Company. Mr. Rosenbluh, in  
what way does the acting pictured on the foreign films differ  
from that on the domestic films, and how is it that one is pre-  
ferred by the exhibitor as a rule? The domestic film is pre-  
ferred, is it not? A. Yes, sir. The domestic film, the actions  
are mostly designated by the face, the features, the rolling  
of the eyes, and expression of the face, whereas the foreign  
2 acting is mostly done by the hands, expressing surprise, try-  
ing as much as possible to convey their ideas by the motion  
of the hands, and it seems as though the American public  
does not agree with that mode of exhibiting their feelings,  
and so forth. They like the American idea better. And the  
ideas of American manufacturers seem to have struck the  
ideas of the American public better than the foreign man-  
ufacturers.

Q. Do the tastes of different communities vary, for in-  
stance, will a theatre in one section of New York City find  
that its patrons prefer a certain type of film, and that the  
owners of the theatres in another section of the City find  
that their patrons prefer a different kind of film? A. Yes,  
3 sir. That is very decided. The Italian population or He-  
brew population, and the people who are living in the more  
crowded sections, they seem to care more for the dramatic  
subjects, and a certain amount of western shooting and  
western scenes and cowboys.

Q. They like tales of adventure? A. Tales of adventure.  
Whereas, the better class of people, in the West Side sections  
they would much rather see a scientific picture, comedies,  
clean comedies, and educational subjects, depicting scenery  
that they probably have seen in their travels. They go in  
4 more for that class. Some of the best known theatres that  
we are supplying at the present time, theatres seating 3,000  
people at a time, do not want to show a Western or cowboy  
picture. The patrons absolutely object to looking at pic-  
tures of that kind, and we were in fact, notified by the mana-  
gers of these theatres to exclude from their program anything  
of that nature. Do not like anything with the stabbing or  
killing, whereas in the lower classes or sections, the crowded  
sections, they just eat it up.

Q. That is, the theatre that you have just mentioned, for  
instance, would not like the "Musketeers of Pig Alley" or that  
type? A. Yes, sir.

Q. The name I have just given you is a current production, isn't it? A. About three months old. 1

Q. Are the offerings of the Patents Company licensees which are distributed to the theatres, the exhibitors, the same? I mean, do they offer this theatre that you have last mentioned, the same program as the theatre in the other section of the City? A. Well, under the present conditions or methods of distribution, there is absolutely no consideration given to the location of the theatre. The most important thing that is tried to be carried out, is the question of the age of a film. That is, The General Film Company operating in New York, from observations that I have made and reports from certain exhibitors, they find particularly fault with the manner of distribution, stating that they have no choice in the selection of their program, that they are obligated to take exactly what is allotted to them by the arrangement by dates, and certain makes of pictures to be released on each day. 2

Q. If the Rental Exchange were allowed, or if your exchange was allowed to collect a library of these films, you could supply from time to time, subjects along certain lines on request of the exhibitor? A. Yes, sir.

Q. For instance, you have received a number of scientific or educational films in the last few years. If you had collected or retained those, you could supply them to this theatre that wants them, this new theatre—and in the same way you could supply from your library the films of different types to these theatres that prefer the dramatic films. Is that true? A. Yes, sir; there would be no trouble in doing that, but we are not in any position to accumulate any such library so long as the return of the film— 3

Q. (Interrupting): I understand. Under the rules or the conditions of the trade, it is impossible for you to collect any library because the license agreement requires the return of the film? A. Yes, sir. 4

Q. We will take this theatre, this new theatre desiring the scientific and educational films that you have named. That is a licensed theatre, I take it? A. Yes, sir.

Q. And that theatre is barred from exhibiting to its patrons any educational or scientific films that may be produced by any one other than the Patents Company's licensees? A. Yes, decidedly so.

Q. Just for the purpose of having it on the record, Mr. Rosenbluh, what do you mean by a scenic film? A. A film



1 which does not reproduce a comedy or drama but is a view, for instance, of some part of the city where there is action.

Q. For instance, a river, or taken from a boat going up a river, or on a bridge? Is that what you call a scenic film?

A. Yes, sir; those are termed in the trade scenic pictures.

Q. You were then obliged at the beginning of this Patents Company arrangement, to return all the film which you had theretofore collected? A. Yes, sir.

Q. And did you get any allowance or any consideration for the return of that film? A. No, sir.

2 Q. It was made a condition of obtaining licensed film thereafter? A. Yes, sir.

Q. How much was the value of the film which you were obliged to return about that time? A. The purchase value was about three hundred thousand dollars.

Q. Was a large part of it in good condition? A. Yes, sir.

Q. And some of those films, if you now owned them, you could furnish to this theatre up here that you have just mentioned, or any other theatre which requested certain topics? A. So long as they did not have a picture before they would be glad to take it any time, if it is the kind of subject that best suited their audiences.

3 Q. Mr. Rosenbluh, you have been subpoenaed in this case, have you not? A. Yes, sir.

Q. You have produced some papers or statements; first, a list giving the names of the manufacturers with the prices of film in the year 1907. Is this a list of manufacturers and importers from whom you purchased in that year, and does the list give the prices as shown by your books for that year? (Handing paper to witness.) A. (Witness examining paper.) Yes, sir.

4 Mr. GROSVENOR: I offer it in evidence.

The paper is marked Petitioner's Exhibit No. 94, and is as follows:

### **Petitioner's Exhibit No. 94.**

Names of Manufacturers with prices of film, year, 1907:

Biograph Co., 11 cents.

Edison Mfg Co., 11 cents.

Essanay Film Mfg. Co., 9 cents.

Gaumont Co., 10 and 11 cents.

Kalem Co., 9 cents.

1

George Kleine, 10 and 11 cents.

Lubin Mfg. Co., 5, 7, 8, 9 and 10 cents.

George Melies, 9 and 11 cents.

Pathe Freres, 7½, 8½, 9 and 9½ cents.

Selig Polyscope Co., 9 cents.

Vitagraph Co. of America, 9 and 11 cents.

Cines Co., 11 cents.

Williams, Brown & Earle, 9 and 10 cents.

Miles Bros., 9 cents.

Actograph Co., 9 cents.

2

Goodfellows & Co., 9 cents.

Urban Eclipse Co., 10 cents.

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Q. You have also produced a list giving the names of the manufacturers of projecting machines and their prices during the years 1907, 1908, 1909, 1910, 1911 and 1912. Are the figures incorporated on that statement also taken from your books? (Handing paper to witness.) Does that show the prices that you paid in that year? A. (Witness examining paper.) These are taken from my memory of prices, but they are correct.

3

Mr. CALDWELL: That statement is objected to.

Q. And do these prices refer to the same machines of that company? A. As I stated before, they changed the numbers of the machine, and probably added some additional fireproof regulations.

Mr. GROSVENOR: I offer it in evidence.

The paper is marked Petitioner's Exhibit No. 95, and is as follows:

4

1                      **Petitioner's Exhibit No. 95.**

NAMES OF MANUFACTURES OF PROJECTING MACHINES AND THEIR PRICES DURING YEARS 1907, 1908, 1909, 1910, 1911 and 1912.

	1907	1908	1909	1910
Edison Co. ....	\$125.00	\$150.00	\$175.00	\$225.00

	1911	1912
2      "      "      .....	\$225.00	\$225.00

	1907	1908	1909	1910
Powers Co. ....	\$155.00	\$185.00	\$195.00	\$225.00

	1911	1912
"      "      .....	\$225.00	\$250.00

---

3      Q. I show you a letter addressed to the Greater New York Film Rental Company, signed "George Kleine" dated January 23rd, 1908. Is that the letter received by your company (indicating)? A. (Witness examining letter): Yes, sir.

Mr. GROSVENOR: I offer it in evidence.

Paper is marked Petitioner's Exhibit No. 96, and is as follows:

**Petitioner's Exhibit No. 96.**

4                      KLEINE OPTICAL COMPANY  
                         Projection Apparatus

Home Office: 52 State St.

Chicago, Jan. 23rd, 09.

Greater N. Y. Film Rental Co.  
New York, N. Y.

Gentlemen:—

We have a letter from one of our New York correspondents, which reads as follows:—



“The writer was present in Court this afternoon when the injunction was argued in the case of Oes against the Biograph Co. and we are glad to say that an injunction was denied with costs. No doubt you will receive details in regard to this from the Biograph Co. but we can say in a few words that Judge Leventritt who represented the Biograph Co. argued the other people “off their feet” so that they had practically nothing to say in reply.” 1

This effectually disposes of the claims of those concerns unlicensed by the Motion Picture Patents Co. which have assumed rights under old Biograph licenses.

With regard to the attitude of theatre managers toward the payment of royalty for the use of licensed films on licensed machines, we find that on calm consideration, most of them see the justice of the exaction as well as the advantages that they will derive through the future action of the Motion Picture Patents Co. When it is explained to them that licenses may be obtained with difficulty by new theatres which threaten to open up in locations already well provided, they realize that it is to their interest to co-operate with licensed manufacturers and exchanges. 2

Trusting that the new conditions will work out to your advantages, we remain, 3

Very truly yours,

GK/AJB—

GEORGE KLEINE.

#### BRANCH OFFICES

New York, N. Y.—662-664 Sixth Ave.

Seattle, Wash.—309 Melhorn Building.

Birmingham, Ala.—Harrington Building, 2008½ Third Ave.

Montreal, Canada.—La Patrie Building.

Des Moines, Iowa.—229 Commercial Building. 4

Denver, Colo.—302 Boston Building.

Indianapolis, Ind.—214 Traction Building.

Kleine Optical Co. of Missouri, St. Louis, Mo.—523 Commercial Building Sixth and Olive Sts.

Kleine Optical Co. of California, Los Angeles, Cal.—369 Pacific Electric Bldg.

Boston, Mass.—657 Washington St.

1           Mr. CALDWELL: Petitioner's Exhibit No. 96, is objected to on the ground that it is incompetent, immaterial and irrelevant.

2           Q. This letter, Exhibit No. 96, dated January 23rd, 1909, and signed "George Kleine" states: "With regard to the attitude of theatre managers toward the payment of royalty for the use of licensed films or licensed machines, we find that on calm consideration, most of them see the justice of the exaction as well as the advantages that they will derive through the future action of the Motion Picture Patents Company. When it is explained to them that licenses may be obtained with difficulty by new theatres which threaten to open in locations already well provided, they realize that it is to their interest to co-operate with licensed manufacturers and exchanges." Did you have any conversation with any of the Patents Company licensees or officers of the licensed manufacturers in regard to the issuing of licenses to new theatres? A. Yes, sir.

3           Q. With what manufacturers or individuals connected in the manner I have indicated, did you have such conversation? A. Mr. MacDonald, who was the general manager of the Patents Company.

4           Q. When was that? A. At or about the time that the exactions were put into circulation, asking the exhibitors to pay royalties. They wanted an explanation as to why this royalty was to be put in force, and, in turn, I applied to Mr. MacDonald to give me some information so that I could in turn give it to the exhibitors. And he told me that the object was to protect those exhibitors who had licenses from theatres who threatened to open up, and take away their profits. That those who already had a license would be protected, and that it assured those exhibitors of permanency in business. In other words, if a certain population was calculated to be necessary to give each theatre a profit, that no more than a certain number of theatres would be granted a license according to the population of that vicinity or town or city wherever it happened to be.

          Mr. CALDWELL: Now, the witness's conversation with Mr. MacDonald is objected to on the ground that it is incompetent, immaterial and irrelevant, and on the ground that the defendants in this case are not

bound by Mr. MacDonald's views of the license arrangement. 1

Q. Mr. MacDonald was the General Manager of the Patents Company? A. Yes, sir.

Q. And you went to him to ask for information as to how to do business or talk to the exhibitors, your customers, who were complaining about the weekly royalty of \$2.00? A. Yes, sir.

Q. Where was that conversation? A. At the office of the Motion Picture Patents Company. And Mr. MacDonald had also given this information at a gathering of all exchanges, so that everybody would know how to handle the situation and it would be handled in a similar way by each and every one. I believe one of the meetings was at No. 10 Fifth Avenue, which was the first office of the Motion Picture Patents Company. He also stated at that time that although \$2.00 was the amount that was decided on as a commencement, it would eventually be re-arranged, so that each theatre would pay its proportion of \$2.00 according to the number of seats that a theatre had. The small theatre would pay about 50 cents, a medium sized theatre about a dollar, and a large theatre \$2.00, but to commence with, every one should pay \$2.00 until it was decided on how best to handle that proposition. There was some correspondence on that matter also sent out by the Patents Company. 2 3

Q. You mean in the form of a printed notice? A. A printed notice, yes.

Q. Did Mr. MacDonald at any time, or any of the other officers of the Patents Company, refer to any other license agreements, that is those prevailing in other lines of industry? Do you recall anything about that? A. No, sir.

At this point, on this Wednesday, January 22nd, 1913, the hearing is adjourned until Thursday, January 23rd, 1913, at 10.30, at the Hotel McAlpin. 4



1

IN THE

DISTRICT COURT OF THE UNITED STATES,

FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

UNITED STATES OF AMERICA,  
Petitioner,

*v.*

No. 889.

Sept. Sess., 1912.

2

MOTION PICTURE PATENTS Co., and others,  
Defendants.

New York City, January 23rd, 1913.

The hearing was resumed pursuant to adjournment at 10:30 o'clock A. M., on this January 23rd, 1913, at the Hotel McAlpin.

3

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General.

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.

4

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies.

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Mr. DWIGHT MACDONALD, appearing for Mr. Rowland.

Thereupon, WILLIAM PELZER, resumed the stand. 1

Direct examination (continued) by Mr. GROSVENOR:

Q. Mr. Pelzer, have you brought all the things which you were requested to produce? A. I have brought, first, the papers that I understand Mr. Marvin was to produce; I brought them.

Q. Just let me see what you have and I will put it on the record. A. All right, sir.

Mr. GROSVENOR: The witness has produced a statement purporting to show the royalty receipts, legal disbursements and number of licensed exhibitors of the Motion Picture Patents Company; also, a list of the replevin suits instituted by the manufacturers licensed by the Motion Picture Patents Company. Before putting them in evidence I will examine same. 2

Mr. WILLIS: Will you permit me to make an explanation, as to the paper handed you, as to the replevin suits instituted by the manufacturers licensed by the Motion Picture Patents Company, that is not absolutely correct, but it is as near so as it could be made, and inasmuch as there is no special department for it the data with reference thereto had to be obtained from the various towns and places where those suits were brought. 3

Q. What else have you? A. Two license agreements between the Motion Picture Patents Company and the Gaumont Company, and produced from the files of the Motion Picture Patents Company.

Q. I will also examine those. Is that all you have? A. Yes. I have been unable to bring the statements—financial statements—from the books of the General Film Company called for as we were unable to complete the work in time for this morning's session. I might say that is due largely to the fact that I am not myself entirely familiar with the books as yet, and our auditor has been there only a very short time, and it takes us a little longer than usual to prepare statements of that kind. 4

1 Q. How many branches has the General Film Company? A. Offhand, I think there are forty in the United States, and five in Canada.

Q. The central office is located at 200 Fifth Avenue, New York City? A. Yes, sir.

Q. What sort of reports do you receive from these different exchanges of the business they are doing? A. I couldn't give you that in detail.

Q. How often do you receive such reports? A. Weekly.

2 Q. And those weekly reports show the amount of film bought during the preceding week, do they? A. The amount of film leased from the manufacturers.

Q. And the amount of film sub-leased by the branch of the General Film Company to the exhibitor making the report? A. I do not think the reports give that detail; they undoubtedly give the aggregate amounts—

Q. Received? A. Yes, sir.

Q. And the weekly expenses? A. Yes, sir.

Q. That is the operating expenses? A. Yes, sir.

Q. And the net profits? A. They do not state the net profits.

3 Q. Or the gross profits? A. Not even the gross profits. They give the amount of the receipts and the other disbursements—they could not figure the profits because there would be other items chargeable to those offices from time to time.

Q. Then, from these weekly reports is a general report made up every week for the use of the officers and Directors of the General Film Company, showing in summary form the result of all those reports from the different exchanges, which are exchange branches? A. No, not every week.

4 Q. How often is the summary made up? A. I couldn't say; I have not had occasion to look at such summaries since I have occupied the office of Treasurer, but I believe it requires an interval, at least, of a month or more before any such summaries are made.

Q. Who preceded you as Treasurer? A. Mr. Samuel Long.

Q. And how long was he Treasurer? A. I can't say exactly; I should say about a year.

Q. Do you know what is done with those reports when



they are made up? A. Which reports do you have reference to, the reports from the exchanges? 1

Q. No, these summaries that are made up, showing the results from all the reports from the exchanges? A. I believe they are in book form.

Q. Will you please bring in tomorrow that book, containing all these reports, or the books containing them, and let me see those, and perhaps it will expedite the preparing of the other reports which I have asked for? A. I wish you would be a little more specific, Mr. Grosvenor. From your question I might need a truck load of books.

Q. Mr. Pelzer, you have a large organization in the General Film Company, have you not? A. Yes. 2

Q. Now, what I want is the book containing the concrete summaries which are prepared from all the reports of the branches, and which are submitted for the use of the Directors and officers? A. I don't think there is such a book that gives concrete summaries; I think they go into the different branches, or the different phases of the business, and therefore it would require a number of books.

Q. Well, let me see if I can make it clear to you; you stated that you got weekly reports from every exchange? A. Yes, sir. 3

Q. How large are those reports, the weekly reports? A. I think they are on full page sheets—I have never examined them closely; I do not think I ever saw one of them.

Q. What is done with them? A. Turned over to the auditor and then distribution is made on the books.

Q. Then what? A. Distribution is made on the books.

Q. Then you stated that from these forty odd reports that came in every week, either once a month or weekly a general report showing the total results of the particular reports is made up, either weekly or monthly? A. I don't think I said a general report is made. 4

Q. Well, call it a report, or a tabulation, whatever you like? A. I believe there are a number of tabulations.

Q. How often are those made? A. As I have said, I think about once a month or once in five weeks, I am not sure.

Q. And what is done with those? A. They are all bound in loose leaf ledger form.

Q. How large is that report that is made up once a month or once in five weeks? A. I don't know; I couldn't

1 say; I don't know the size of that specific book; I would have to look at it.

Q. Now what I want is that you bring the book or books containing those accounts, the summaries, or reports, whatever you call them, that are made up in the manner you have described, every four or five weeks, and which are based upon the forty or fifty weekly reports that come in from the exchanges—you understand what I want? A. I think I do—I think I am not sure—I would like to know if you can tell me just what you want me to bring—I might, so far as I can see, produce quite a number of books.

2 Q. That will be for you to determine. If there is quite a number of books, please bring them. I want the books containing those summaries made up from the weekly reports of the forty or fifty branch exchanges? A. I will do the best I can.

Q. How about those payments made to the manufacturers? Have you found out about them? A. The statements are being prepared.

Q. Can you bring those tomorrow morning, or this afternoon? A. Tomorrow morning, I think.

3 Q. I wish you would bring also tomorrow morning all agreements between the General Film Company and the different manufacturers which have been entered into at any time since the General Film Company commenced doing business; also, all agreements between the General Film Company and the Kinetograph Company, and all agreements between the General Film Company and the Patents Company, and in producing the latter you can act as the Treasurer of the General Film Company and as the Secretary of the Patents Company both; and all agreements between the Kinetograph Company and the Patents Company, and all agreements between the Patents Company and the  
4 Eastman Company? A. I believe I handed to you, Mr. Grosvenor, all agreements between the licensed manufacturers and the General Film Company, and the agreement between the General Film Company and the Motion Picture Patents Company, a year ago.

Q. Yes, I have some of those. Now, I wish you would look for others, because your answer says there are a lot of others. I wish you would produce the others, and I will have those you gave me here tomorrow morning? A. There

is no agreement between the General Film Company and the Kinetograph Company. 1

Q. Well, between the Patents Company and the Kinetograph Company? A. No agreement between the Kinetograph Company and the Patents Company. If there are such, though, I will produce them. I omitted speaking about the Eastman agreements.

Q. I have some of the Eastman agreements. A. The agreements between the Motion Picture Patents Company and the Eastman Company were also delivered to Mr. Grosvenor by me a year ago. There were four Eastman agreements, as I remember. 2

Q. Now, I show you an agreement dated January 1, 1909, between the Patents Company and the Eastman Company, and another agreement between the same parties dated June 15, 1909, and another agreement between the same parties of February 14, 1911, and another agreement between the Patents Company and the Edison Company, Edison Manufacturing Company, and Eastman Company, of February 14, 1911. Are there any other agreements between the Eastman Company and the Patents Company? A. I do not know of any, but I will have a search made, and make inquiry. 3

Q. Of course you will not make search for any of those that I have named. I will retain these agreements that I have shown you and determine later whether to introduce them. A. I have a list of those you have.

Q. Mr. Pelzer, the Patents Company, maintains a large force of detectives, or men, whose duty it is to see whether the licensed exhibitors are observing the terms of the licenses, and to find out whether they are displaying unlicensed film, or independent film, so-called, or doing anything else that the licensed agreements provide against, is that correct? A. If there are any such I never heard of them. 4

Q. Who has charge of that branch of the Patents Company? A. I don't know of any such branch in the Patents Company.

Q. Of the Patents Company? A. I don't know of any.

Q. Well, don't you have employees whose duty it is to go to the different theatres and ascertain whether any unlicensed film is being displayed? A. I don't know of any employees in our service whose duty it is to do that.

Q. Well, you received information from time to time as



1 to such violations? A. I think a large part of that information comes from the exhibitors themselves.

Q. Do you mean that if an exhibitor shows unlicensed films he tells you that he is doing it in all cases? A. No, his competitor does.

Q. Who is Mr. Braden? A. He is a clerk in the employ of the Patents Company.

Q. Does he have any men under him? A. Not to my knowledge.

Q. Do you have anything to do with this matter of cancellation of licenses of theatres? A. No, sir.

2 Q. Well, who does? A. Mr. Braden and Mr. Marvin look after all those matters.

Q. Then you would not be in a position to know how that information as to theatres is obtained, would you? A. No, sir.

Q. And you do not have anything to do with the cancellation of licenses of theatres? A. No, sir.

Q. Or with the obtaining of that information? A. No, sir.

Q. In regard to the same? A. No, sir.

3 Q. Then, when you stated that the Patents Company had no such force, you simply mean that if it has such force it is not within your knowledge? A. I said personally I had no knowledge of any such force.

Q. But you do not mean to say that the Patents Company has no such force? A. I don't believe they have.

Q. You cannot say of your own knowledge that they do not? A. No, I would not say that.

Q. What is Mr. Braden's full name? A. John Braden, I think it is.

4 Q. And he is located at 80 Fifth Avenue? A. Yes, sir.

Q. Is he an office man? A. Yes, sir.

Q. Who is Durant Church? A. He is an attorney who makes his headquarters at the Patents Company office.

Q. And does he have charge of considerable of the litigation in connection with replevin suits? A. I don't know.

Q. Don't you know what his duties are? A. No, sir.

Q. You are one of the officers of the Patents Company? A. Yes, sir.

Q. And how long have you been such? A. Since sometime in 1911, the early part of 1911.

Q. Well, isn't it necessary for you to know, in order

to properly perform your duties of Secretary, what the other officers are doing, and their duties and the duties of employees? A. Oh, not necessarily. Mr. Church is not an officer of the Patents Company.

Q. But his offices are at the Patents Company offices? A. Yes, sir.

Q. Now, what does he do up there? A. I don't know.

Q. Does he draw any salary? A. I don't know.

Q. Did you ever have any occasion to consult or confer with him? A. No, sir.

Q. Did you ever consult or confer with him at the offices of the Patents Company? A. Do you mean relating to matters of the Motion Picture Patents Company?

Q. I said, did you ever have occasion to consult or confer with him at the offices of the Patents Company? A. I asked you what you meant, whether you meant in connection with matters of the Motion Picture Patents Company? I may have talked with him about personal matters.

Q. Did you ever consult with him there about matters relating to the business of the Patents Company? A. No, sir.

Q. Where are his offices up there? A. He occupied a part of a desk in the main office of the company.

Q. A part of a desk? A. Yes, it is a double desk.

Q. Who occupies the other part of his desk? A. Mr. Braden.

Q. Now, Mr. Braden is the man who looks after this matter of cancellation of licenses with Mr. Marvin? A. He looks after all complaints.

Q. And does Church have anything to do in the same matters? A. I don't think so; I never knew him to have anything to do with it.

Q. What does he have to do? A. I don't know that he has anything to do.

Q. You mean he has a desk there, that he just stays there, and does not do anything? A. No, I don't mean that at all. He is very seldom at the office.

Q. Does his name appear as an attorney on the bulletin of the building of the Patents Company? A. I don't think so. I never saw it.

Q. Is your knowledge and information, Mr. Pelzer, as

1   hazy about other people in the offices of the Patents Company as it is about the duties of Mr. Church? A. Well, I don't know whether Mr. Church is actually in the employ of the Motion Picture Patents Company.

Q. Who besides Braden and Marvin have to do with the cancellation of licenses, or as you term it, "complaints" as to theatres? A. No one directly.

Q. No one directly? A. No, sir.

Q. This man Braden is Marvin's assistant, is that right? A. I would not exactly call him Mr. Marvin's assistant; but he has charge of all complaint cases.

2   Q. And he reports to him? A. Yes, to Mr. Marvin.

Q. And men come in to the office from time to time and confer with Braden about matters? A. Yes, sir, I have seen them doing that.

Q. Do these men that come in and talk to him from time to time have office desk there? A. No, sir.

Q. Do they stay outside? A. I think these people that I have in mind are the exhibitors.

Q. Is there any pay roll which Mr. Braden looks after? A. I don't know. I don't believe so.

3   Q. In other words, Braden is the man to call and ask for information in this matter? A. Yes.

Q. And you don't know about it, is that right? A. I don't know what information you want from Mr. Braden. If you want information regarding the complaint cases, I should say, yes.

Q. I mean in regard to the cancellation of licenses, and the way information as to theatres is obtained, and as to all such matters I should direct my inquiries to Mr. Braden or Mr. Marvin, is that right? A. Yes.

4   Q. Mr. Pelzer, who is there up there at the offices that would know more about the books than you seem to know, that is, about these reports? You are the Treasurer, and the reports I am referring to are the reports from the branches to the General Film Company, and what summaries are made up every week or every month from those reports that come in weekly from the branches? A. The auditor would know more about it although he is not entirely familiar as he has been with us just a little over a month.

Q. Who is under him? A. I can't say who the man is



in his particular department that would be more familiar with it. 1

Q. Who is the assistant auditor? A. We have no assistant auditor.

Q. Who is the auditor? A. Mr. Gulick.

Q. And who is the chief clerk, or Gulick's chief assistant? A. I don't think we have anybody designated as his chief assistant.

Q. Well, who is it that acts in Gulick's absence even though he is not designated? A. We have had a man named Brink, but he is traveling now, around to the different branches at the present time examining books. 2

Q. And how long has he been there? A. I don't know that exactly, but he has been there sometime, I believe, though.

Q. Then, I will excuse you until to-morrow morning. You understand what I have asked you to produce? A. I think I understand it, and I will try to do it.

Q. And you will bring these books down, please? A. Yes.

Q. Mr. Pelzer, it might facilitate the conduct of your business and the convenience of your office, if you would make an effort to ascertain which books contain the summaries, because you see, if you were to bring down a lot of books with details, why it would require some little time, and I might keep them from you longer than otherwise would be occasioned. So, if you will make an effort to bring the books in which those summaries are bound up, I can probably get through with the matter and return them more expeditiously. A. That is what I wanted to know particularly, what summaries you are after. 3

Q. I think I have made it clear. You can confer with your counsel. I have made it as clear as I can for a reasonably intelligent man. A. All right. 4

MR. GROSVENOR: I will introduce at this time, license agreement, dated March 2nd, 1909, between the Motion Picture Patents Company and the Gaumont Company, this agreement having been produced by Mr. Pelzer at the request of Government counsel.

The paper is marked "Petitioner's Exhibit No. 127, and is as follows:

1

**Petitioner's Exhibit No. 127.****LICENSE AGREEMENT**

2

(a) THIS AGREEMENT made this 2d day of March 1909, by and between the MOTION PICTURE PATENTS COMPANY, a corporation organized and existing under the laws of the State of New Jersey and having an office at Jersey City in said State, party of the first part (hereinafter referred to as the "Licensor"), and the GAUMONT COMPANY, a corporation organized and existing under the laws of the State of New York, and having an office at New York City, New York, party of the second part (hereinafter referred to as the "Licensee"), WITNESSETH THAT:—

(b) WHEREAS, the Licensor represents that it is organized to own, deal in and grant licenses under Letters Patent pertaining to the motion picture art, and that it is the owner of all the right, title and interest in and to United States Letters Patent:

3

No. 578,185, dated March 2, 1897, for Vitascope, granted to Thomas Armat;

No. 580,749, dated April 13, 1897, for Vitascope, granted to Thomas Armat;

No. 586,953, dated July 20, 1897, for Phantoscope, granted to Charles F. Jenkins and Thomas Armat;

No. 588,916, dated August 24, 1897, for Kinetoscopes, granted to Charles M. Campbell as the assignee of Willard G. Steward and Ellis F. Frost;

4

No. 629,063, dated July 18, 1899, for Kinetoscopic Camera, granted to American Mutoscope Company, as the assignee of Herman Casler;

No. 673,429, dated April 30, 1901, for Kinetoscope, granted to The American Vitagraph Company as the assignee of Albert E. Smith;

No. 673,992, dated May 14, 1901, for Vitascope, granted to Thomas Armat;

No. 707,934, dated August 26, 1902, for Projecting Kinetoscope, granted E. & H. T. Anthony & Co., as assignees of Woodville Latham;

No. 722,382, dated March 10, 1903, for Animated Pic-

ture Apparatus, granted to American Mutoscope & Biograph Company as the assignee of John A. Pross; 1

No. 744,251, dated November 17, 1903, for Kinetoscope, granted Albert E. Smith;

No. 770,937, dated September 27, 1904, for Kinetoscope, granted The Vitagraph Company of America as the assignee of Albert E. Smith;

No. 771,280, dated October 4, 1904, for Winding-Reel, granted Albert E. Smith;

No. 785,205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted The Vitagraph Company of America as the assignee of William Ellwood; and 2

No. 785,237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted The Vitagraph Company of America as the assignee of Albert E. Smith;

all of which said Letters Patent relate to improvements in the motion picture art, and that there are no outstanding licenses, shop rights or other rights under said Letters Patent, or either of them, except a license for Parlor Kinetoscopes granted The Karmata Company, of Washington, D. C., under Letters Patent Nos. 578,185; 580,749; 586,953; and 673,992, and certain alleged licenses under U. S. Letters Patent No. 586,953, which are in dispute, claimed to be owned by the Edison Company and the American Graphophone Company, of Washington, D. C., and S. Lubin, of Philadelphia, Pennsylvania; and excepting a license granted by the American Mutoscope & Biograph Company to the firm of Marvin & Casler to manufacture and sell cameras and exhibiting or projecting machines under Letters Patent owned by it (some of which are hereinbefore referred to) for use in foreign countries only, and excepting certain licenses granted by the Armat Motion Picture Company to the American Mutoscope & Biograph Company under Letters Patent Nos. 578,185; 580,749; 586,953; 588,916; and 673,992, and by the latter Company to the former Company under Patents Nos. 707,934 and 722,382, which licenses are, however, by agreement between said parties, suspended and are not to be acted upon until the Licensor becomes bankrupt, ceases doing business or shall be dissolved voluntarily or otherwise, or its Charter shall be repealed; and 3 4



1 (c) WHEREAS, the Licensor represents that it is  
the owner of all the right, title and interest in and to re-  
issued Letters Patent of the United States, No. 12037, dated  
September 31, 1902, and No. 12,192, dated January 12, 1904,  
original Letters Patent whereof were numbered 589,168,  
and dated August 31, 1897, and that there are no outstand-  
ing exclusive licenses, shop rights and other rights under  
said reissued Letters Patent or either of them, and no out-  
standing licenses or other rights of any kind, except license  
agreements thereunder between the Edison Manufacturing  
Company, of Orange, New Jersey, and certain manufacturers  
2 of motion pictures, the operation of which agreements has  
been suspended, and between the Licensor and certain manu-  
facturers and importers of motion pictures; and

(d) WHEREAS, the Licensee is engaged in the manu-  
facture and importation of a certain synchronizing device  
for motion picture exhibiting and sound reproducing ap-  
paratus, which is known as the "Chronophone," and in the  
business of selling, leasing and using the said "Chrono-  
phone," and also in the business of manufacturing, import-  
ing, selling and exhibiting "talking motion pictures" ex-  
clusively, including the printing of positive "talking motion  
pictures" from negatives of the Licensee's own production,  
and relying upon the aforesaid representations of the Li-  
censor and induced thereby, desires to obtain from the  
Licensor a license under said two reissued Letters Patent  
Nos. 12,037 and 12,192, and Letters Patent Nos. 629,063  
and 707,934, to manufacture and import "talking motion  
pictures" and to use and to lease for use, said "talking mo-  
tion pictures" in the said "Chronophones," the exhibiting  
or projecting machines embodied in or attached to which  
contain the inventions, or some of them, described and  
4 claimed in said Letters Patent Nos. 578,185; 580,749; 586,-  
953; 588,916; 673,329; 673,992; 707,934; 722,382; 744,251;  
770,937; 771,280; 785,205 and 785,237; and

(e) WHEREAS, the Licensee represents that more  
than fifty per cent. (50%) of its capital stock is now owned  
and controlled by the Societe des Etablissements Gaumont,  
of Paris, France; and

(f) WHEREAS, the said Societe des Etablissements

Gaumont, has, by an agreement in writing, dated September 23, 1908, appointed George Kleine, of Chicago, Illinois, its sole agent for the importation into the United States, of motion pictures of its manufacture, except "talking motion pictures"; and

(g) WHEREAS, the Licensor has by an agreement in writing, dated December 18, 1908, licensed the said George Kleine to import motion pictures manufactured by the said Societe des Etablissements Gaumont, under certain terms and conditions, one of which conditions is, that if the said Societe des Etablissements Gaumont shall import or shall knowingly permit or knowingly be a party to the importation of motion pictures by others than the said George Kleine, without the Licensor's knowledge and consent, or shall manufacture motion pictures in the United States without the Licensor's consent, then the license to the said Kleine, so far as it extends to the importation of motion pictures manufactured by the said Societe des Etablissements Gaumont, shall be terminated and cancelled, upon due notice.

(h) NOW, THEREFORE, the parties hereto, for and in consideration of the sum of one dollar to each in hand paid by the other, and for other good and valuable considerations from each to the other moving, receipt of all of which is hereby acknowledged, have agreed as follows:

1. The Licensor hereby grants to the Licensee for the term and subject to the covenants, conditions and stipulations hereinafter expressed, the right and license under said reissued Letters Patent No. 12,037 and Letters Patent Nos. 629,063 and 707,934 for the United States, its territories, dependencies and possessions (hereinafter called the "territory aforesaid") to manufacture and use such a number of cameras embodying the inventions of said reissued Letters Patent No. 12,037 and Letters Patent Nos. 629,063 and 707,934, as may be necessary for the proper conduct of the Licensee's business in the manufacture of "talking motion pictures" and to manufacture, print and produce positive "talking motion pictures" embodying the inventions of said reissued Letters Patent No. 12,192, and to import positive and negative "talking motion pictures" made by the said

- 1 Societe des Etablissements Gaumont, the negative "talking motion pictures" from which such positive "talking motion pictures" are printed or imported not to exceed a total length of twenty-five hundred (2500) running feet of new subjects in any one week during the continuance of this agreement, such number of running feet to be ascertained by adding together the length of one print of each new subject so printed or imported without regard to the number of positive prints of each subject which may be printed or imported. The Licensor hereby further licenses the
- 2 Licensee to exhibit, and to lease for exhibition, in the "territory aforesaid," positive "talking motion pictures" made or imported by it under the foregoing license upon the condition that they be used solely in exhibiting or projecting machines containing the inventions or some of them, of the said Letters Patent, Nos. 578,185; 580,749; 586,953; 588,916; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205; and 785,237, and licensed by the Licensor and only when such exhibiting or projecting machines are used in connection with synchronizing "talking motion pictures" apparatus manufactured or imported by the Licensee and only in connection with the sound records furnished by the
- 3 Licensee with such "talking motion pictures." The Licensee covenants and agrees not to manufacture or import, during the continuance of this agreement, any motion pictures other than the "talking motion pictures" which the Licensee is hereby licensed to manufacture and import.

The parties hereto understand and agree that by the expression "talking motion pictures," as hereinbefore and hereinafter used, is meant a transparent or translucent tape-like film having photographs thereon of an object in motion, used solely in connection with a photographic sound record which has been synchronized with the action represented by

4 the said photographs.

The license hereby granted is personal to the Licensee, and not exclusive, and does not include the right to dispose of, in the "territory aforesaid", any cameras embodying any invention covered by said reissued Letters Patent No. 12,037 and Letters Patent Nos. 629,063 and 707,934 and, in the event of the permanent discontinuance or retirement from business of the Licensee for a period of six consecutive months, or upon the termination of the license to George Kleine, referred to in paragraph *g* hereof, to import motion pictures



manufactured by the said Societe des Etablissements Gaumont, by reason of any fault or act of the said Societe des Etablissements Gaumont, or whenever the said Societe des Etablissements Gaumont shall cease to own or control more than fifty per cent (50%) of the capital stock of the Licensee, the license hereby granted shall be immediately terminated.

1

2. The Licensor, for itself, its successors, assigns, and legal representatives, hereby releases, acquits and discharges the Licensee from any and all claims, demands and liabilities for profits and damages, because of any infringement by the Licensee of any or all of the aforesaid United States Letters Patent Nos. 578,185; 580,749; 586,953; 588,916; 629,063; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205 and 785,237, and reissued Letters Patent Nos. 12,037 and 12,192, or use by the Licensee of the inventions, or any of them, covered by said Letters Patent or either of them prior to the date hereof.

2

3. The Licensee hereby recognizes and admits the validity of said reissued Letters Patent No. 12,037, so far as the first three claims thereof are concerned and the validity of said reissued Letters Patent No. 12,192, and Letters Patent Nos. 578,185; 580,749; 586,953; 588,916; 629,063; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205 and 785,237, and the Licensee agrees not to contest or question the same during the continuance of this agreement.

3

(3a). The Licensee covenants and agrees that it will, during the continuance of this agreement, pay to the Licensor, royalties on all positive and negative "talking motion pictures" imported by it at the same rates provided for in Paragraph 4 hereof for royalties on "Licensed Film." The Licensee further covenants and agrees that it will give to the Licensor, between the first and fifteenth days of each month, a statement in writing, sworn to by an officer of the Licensee, if the Licensor should so elect, showing the total number of running feet of "talking motion pictures" so imported by it during the preceding month, beginning with March, 1909, and at the same time pay royalties thereon at the rate of one-half ( $\frac{1}{2}$ ) cent per running foot on all "talking motion pictures" so imported by it during that month.

4

1 The Licensee further covenants and agrees to permit the Licensor, if it should so desire, to examine its books through any reputable chartered accountants, to be agreed upon by the Licensor and Licensee, to determine the number of running feet of "talking motion pictures" imported by the Licensee under this agreement. The Licensor further covenants and agrees that at the end of each year beginning with June 20th, 1910, it will, if the Licensee so directs, make up the account of the royalties paid to it by the Licensee during the preceding year and will return to the Licensee any royalties which the Licensee may have overpaid, according to  
2 the schedule of royalties provided for in Paragraph 4 hereof, by reason of its total importations of "talking motion pictures" added to its purchases of "Licensed Film" for that year, having exceeded four million (4,000,000) running feet, and in order that the Licensor may ascertain the royalty rate to be charged to the Licensee, the Licensee shall instruct the manufacturer or manufacturers of licensed film to communicate to the Licensor the amount of such "Licensed Film" on which the Licensee shall have paid royalty during that year.

3 4. The Licensee covenants and agrees that in the manufacture of "talking motion pictures" both negative and positive in the "territory aforesaid," during the continuance of this agreement, the Licensee will use exclusively sensitized film manufactured and sold in the United States by a manufacturer or manufacturers authorized by the Licensor, such sensitized film herein called "Licensed Film," and that the Licensee will not, in the "territory aforesaid", purchase or otherwise acquire or lease or sell or otherwise dispose of or deal in, motion pictures produced on or by the use of any other film than such "Licensed Film" nor sell or otherwise  
4 dispose of any negative motion pictures.

The Licensor further covenants and agrees that it will, in an agreement in writing with each manufacturer of "Licensed Film," obligate such manufacturer, so long as the latter has the exclusive right to make and sell such "Licensed Film", not to knowingly furnish or sell, in the "territory aforesaid," except "for export," sensitized film for the commercial production of negative and positive motion pictures to any one but the Licensee, and the additional licensees hereinafter provided for, except to the extent of two and one-half ( $2\frac{1}{2}$ ) per cent of the total amount of such "Li-

1  
censed Film", of a width approximately one and  
three-eighths ( $1\frac{3}{8}$  inch) inch or thirty-five (35) milli-  
meters, or wider or narrower, supplied by such manu-  
facturer to the parties to the license agreements re-  
ferred to in Paragraph c during the year preceding June  
20, 1909, and to the Licensee and the additional licensees  
of the Licensor, during any one year thereafter during  
the continuance of such agreements, which amount such  
manufacturer shall have the right to furnish or sell, in  
the "territory aforesaid," to persons not engaged in the  
2  
business of manufacturing, leasing, selling, loaning, rent-  
ing out, or otherwise disposing of or dealing in motion pic-  
tures in the "territory aforesaid;" and with the further ex-  
ception that such manufacturer may also reserve the right  
to manufacture and sell sensitized film suitable for the  
commercial production of negative and positive motion pic-  
tures, of a width not to exceed approximately one (1)  
inch in the "territory aforesaid," to persons, firms and cor-  
porations engaged in the business of manufacturing, leas-  
ing, selling, or loaning, renting out or otherwise disposing  
of or dealing in motion pictures in the "territory afore-  
said," but upon the condition that in case any of them  
3  
produces thereon any picture greater in size than approxi-  
mately three-quarters ( $\frac{3}{4}$ ) of an inch on a line either par-  
allel to or at right angles to the edge of such film, and such  
manufacturer has knowledge thereof, such manufacturer  
will cease supplying such film to any person, firm or  
corporation so doing; and with the further exception that  
such manufacturer may also reserve the right to manu-  
facture and sell in the "territory aforesaid" such sensi-  
tized film suitable for the commercial production of nega-  
tive and positive motion pictures of any width, to persons,  
firms and corporations now having an established business  
4  
of manufacturing motion pictures in any country foreign  
to the United States, who now manufacture negative and  
positive motion pictures in the United States, or who may  
after the date of this agreement commence the manufac-  
ture of negative or positive motion pictures in the United  
States.

The Licensor further covenants and agrees that the  
royalties which it will charge to and receive from the  
Licensee for "Licensed Film" (and which are to be in-  
cluded by the manufacturer or manufacturers in the prices



1 charged for "Licensed Film" to the Licensee and paid over to the Licensor) shall not, for "Licensed Film" of a width approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  inch or thirty-five (35) millimeters, purchased by the Licensee during the year preceding June 20, 1909, and during any year thereafter during the continuance of this agreement, as hereinafter provided, exceed the following rates, that is to say:—

2 If the shipments of such "Licensed Film" to the Licensee, on its orders, for any such year, be four million running feet or less, a royalty of one-half ( $\frac{1}{2}$ ) cent per running foot on the total number of feet for that year; if such shipments, on its orders, of such "Licensed Film," for any such year, exceed four million running feet but do not exceed six million running feet, a royalty of four and one-half ( $4\frac{1}{2}$ ) mills per running foot on the total number of running feet for that year; if such shipments, on its orders, of such "Licensed Film," for any such year, exceed six million running feet but do not exceed eight million running feet, a royalty of four (4) mills per running foot on the total number of running feet for that year; if such shipments, on its orders, of such "Licensed Film," for any such year, exceed eight million running feet but do not exceed ten million running feet, a royalty of three and three-quarters ( $3\frac{3}{4}$ ) mills per running foot on the total number of running feet for that year; and if such shipments, on its orders, of such "Licensed Film," for any such year, exceed ten million running feet, a royalty of three and one-quarter ( $3\frac{1}{4}$ ) mills per running foot on the total number of running feet for that year. And for "Licensed Film" narrower or wider than approximately one and three-eighths ( $1\frac{3}{8}$ ) inch, or thirty-five (35) millimeters, the above mentioned royalties shall be reduced or increased in proportion to the reduction or increase in width of such narrower or wider "Licensed Film" below or above the width of such "Licensed Film" of approximately one and three-eighths ( $1\frac{3}{8}$ ) inch or thirty-five (35) millimeters.

4 The Licensor and Licensee further mutually covenant and agree that the manufacturer of such "Licensed Film" shall in the first instance, that is to say, when such film is billed and shipped by it, charge the Licensee with its price per running foot plus the maximum royalty afore-

said, and on the expiration of each year, counting from June 20th, 1909, shall adjust the royalty account of the Licensee as to "Licensed Film" so billed, and shipped to and paid for by the Licensee, according to the royalty schedule aforesaid, return to the Licensee any amount the Licensee shall have overpaid, according to said schedule, and paying the balance to the Licensors; and that the royalties which may hereafter be paid to the manufacturer of such "Licensed Film" after the date hereof and up to June 20, 1909, under this agreement, shall be adjusted and the excess returned, in the same manner, the royalty rate to be charged for such period being the rate that would have been charged if the shipments of "Licensed Film" to the Licensee had been continued for a year at the same rate at which shipments were made for such period.

The Licensors further agrees that the dealings between the Licensee and the authorized manufacturer or manufacturers from whom the Licensee purchases such "Licensed Film" shall, insofar as the number of running feet ordered by or shipped to the Licensee or anything that would indicate or disclose the number of such feet is concerned, be a matter of confidence between the Licensee and manufacturer or manufacturers, who shall not be at liberty to disclose, and moreover shall be bound in writing not to disclose, directly or indirectly, to the Licensors or any of the additional licensees of the Licensors, the number of such feet of "Licensed Film" so ordered by or shipped to the Licensee; the Licensors further agreeing to so arrange or provide for the reports and royalty payments to be made to it by such manufacturer or manufacturers that the latter shall make such reports and royalty payments in gross, as to all of the licensees to whom shipments of such "Licensed Film" are made, and without specifying the number of running feet of "Licensed Film" so shipped to any of them, either by a statement in writing of the number of such feet or the amount of royalties paid or to be paid by such manufacturer or manufacturers for or on account thereof.

The Licensors and Licensee further mutually covenant and agree that no royalty (except as hereinbefore or hereinafter provided for), other than or in addition to that provided for in this paragraph shall be charged to or col-

1 lected from the Licensee by the Licensor up to June  
20, 1910, or during any renewal of this agreement up to  
August 31, 1914, the date of expiration of said reissued  
Letters Patent Nos. 12,037 and 12,192, and no royalty  
whatever (except as hereinafter provided for) shall be  
charged to or collected from the Licensee by the Licensor  
after either the first, second and third claims of said re-  
issued Letters Patent No. 12,037, and either of the claims  
of said reissued Letters Patent No. 12,192, in any suit as  
hereinafter provided for, for infringement thereof, are held  
invalid by a Court that last hears and decides such suit,  
2 or after August 31, 1914, during any renewal of this agree-  
ment; and that the Licensor shall charge royalties or rents  
for the use of all exhibiting or projecting machines cap-  
able of exhibiting or projecting motion pictures on film  
of a width greater than approximately one (1) inch, con-  
taining the inventions or any of them, described and  
claimed in the aforesaid Letters Patent Nos. 578,185;  
580,749; 586,953; 588,916; 673,329; 673,992; 707,934; 722-  
382; 744,251; 770,937; 771,280; 785,205 and 785,237, li-  
censed by the Licensor and that all such royalties or  
rents shall be collected by the Licensor, directly or in-  
3 directly from the exhibitors, including the Licensee, using  
such machines, and shall be fixed by the Licensor and  
charged and collected from such exhibitors by the Licensor  
at such a rate as to average as nearly as possible a royalty  
or rental of Two Dollars (\$2.00) per week for each such  
licensed machine in use.

The Licensor further covenants and agrees that in  
exacting its weekly royalty for the use of any exhibiting  
or projecting machines embodying one or more of the in-  
ventions described and claimed in said United States Letters  
Patent Nos. 578,185; 580,749; 586,953; 588,916; 673,329;  
4 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785-  
205; and 785,237, to which is attached sound record syn-  
chronizing devices of the Licensee's manufacture or impor-  
tation, it will not discriminate in any manner against any  
theatre using such devices, and that such weekly royalty  
for any such theatre shall in no case be greater than the  
royalties charged to theatres of a corresponding size and  
location not using such synchronizing devices.

5. The Licensee further covenants and agrees not to



sell or otherwise dispose of or offer for sale, in the "territory aforesaid," unexposed positive or negative "Licensed Film" during the continuance of this agreement, but this provision shall not prevent the Licensee from selling as refuse, in the "territory aforesaid," second-hand positive or negative motion pictures or motion pictures which have been used or become shop-worn or in any way damaged, to a manufacturer or manufacturers of "Licensed Film" or to a manufacturer to manufacture other articles than film therefrom, but only after they have been rendered by the Licensee unsuitable for use as motion pictures by cutting or otherwise defacing them; or from selling exposed positive or negative film (either waste or in rolls) known as "blank film" for use by dealers, renters or exhibitors for leaders or for spacing or for similar purposes, but which shall not and cannot be otherwise employed for the exhibition of motion pictures.

6. The Licensee further covenants and agrees not to lease, rent out, sell or offer for sale, or otherwise, dispose of in the "territory aforesaid," motion pictures to anyone purchasing or otherwise obtaining, leasing, using, loaning, renting out, selling, offering for sale, or otherwise disposing of or dealing in, motion pictures containing the inventions of said reissued Letters Patent No. 12,192, not the output of the Licensee or of the additional licensees of the Licensor under the said reissued Letters Patent No. 12,192.

7. The Licensee further covenants and agrees to mark each and every camera which the Licensee may make or use under this agreement embodying the inventions of reissued Letters Patent No. 12,037, Letters Patent Nos. 629,063 and 707,934, or either of them, with the word "Patented" followed by the dates of grant of all of the said Letters Patent, the inventions claimed in which are embodied in the said camera or apparatus, and to photographically print the Licensee's trademark in each picture of at least one scene of each subject of positive "talking motion pictures" manufactured by the Licensee and to mark conspicuously on the labels which shall be placed on boxes or packages containing positive "talking motion

- 1 pictures" manufactured or imported by the Licensee with  
the following words and figures:

LICENSED TALKING MOTION PICTURE

Manufactured and Leased by and Property of

GAUMONT COMPANY

New York, N. Y.

- 2 (Patented in the U. S. August 31, 1897, reissued Jan. 12,  
1904.)

The enclosed talking motion picture is leased only, and  
upon the following terms and conditions:

- 3 (1) That it shall at all times be used in connection  
with the sound record furnished with this picture, and only  
on synchronized motion picture and sound reproducing ap-  
paratus, the synchronizing devices of which have been made  
or imported by the Lessor, and the motion picture project-  
ing machines of which are licensed by the Motion Picture  
Patents Company of New Jersey, under its patents cover-  
ing such projecting machines.

- 4 (2) That the lessee shall not have the right to sublet  
such talking motion picture until such lessee has entered  
into an agreement in writing with the Motion Picture Pat-  
ents Company containing terms and conditions to be pre-  
scribed therein by it, and only while such lessee complies  
with all such terms and conditions and while such agree-  
ment remains in full force and effect.

(3) That the lessee or user thereof shall not make or  
permit others to make any reproduction, commonly known  
as a "dupe," of such talking motion picture or any other  
motion picture containing the inventions of the above re-  
issued patent.

(4) That the lessee or user thereof shall not remove the  
trademark or tradename or title therefrom.

(5) That the violation of any of the foregoing conditions, including the terms and conditions of the agreement referred to in 3, entitles the lessor to immediate possession of this talking motion picture without liability for any price which the lessee or the person in whose possession it is found, may have paid therefor.

The Licensor further covenants and agrees to use all possible diligence in licensing exhibiting or projecting machines now in use in the United States, its territories and possessions (with the exception of its insular possessions and Alaska), embodying any or all of the inventions described and claimed in the said Letters Patent Nos. 578,185; 580,749; 586,953; 588,916; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205 and 785,237.

The Licensee further covenants and agrees that it will not discriminate in favor of any lessee, or place upon any "talking motion pictures" any restrictions, other than those specified in this paragraph and paragraph 15 thereof, without the consent of the Licensor.

8. The Licensee further covenants and agrees not to use, in the production of negative or positive "talking motion pictures," under this agreement, the negative or positive motion pictures (or reproductions commonly known as "duplicates" of the negative or positive motion pictures) of any other manufacturer or person, firm or corporation, whether the same have or have not been copyrighted in the United States or in any foreign country.

9. The Licensee further covenants and agrees that when leasing any "talking motion picture" with the sound record provided by the Licensee for such "talking motion picture" to any lessee for the purpose of sub-leasing by such lessee, it will charge for the film alone not less than ten per cent. (10%) more than the minimum leasing prices which the Licensor has established or may hereafter establish for the lease of motion pictures without sound records by any of its additional licensees under the said reissued Letters Patent No. 12,192, and that it will charge not less than the dealers' rates for the sound records to be used with such film and for any advertising matter supplied with such "talking motion picture." The Licensor covenants



1 and agrees that it will immediately communicate to the Licensee the leasing prices which it may have established for such additional licensees, or any change which it may hereafter make in such leasing prices.

2 The Licensee further covenants and agrees that the rate which it will charge, or will require to be charged by its lessees to any theatre or place of exhibition, for the weekly rental of "talking motion pictures" with the sound record provided by the Licensee for such "talking motion pictures," shall in no case be less than ten per cent. (10%) more than the minimum sub-leasing rate, which the Li-  
censor may establish for that theatre or place of exhibition for the weekly rental of motion pictures without sound records, which minimum sub-leasing rate shall be immediately communicated to the Licensee when so established by the Licensor.

3 10. The Licensor and Licensee further mutually covenant and agree that when leasing "talking motion pictures" to any lessee for the purpose of sub-leasing such "talking motion pictures," an order for one or more positive "talk-  
ing motion pictures" of each and every new subject made by the Licensee when offered for lease in the regular order of business shall constitute a "standing order" within the meaning of any scale of prices which may have been established or which may hereafter be established by the Li-  
censor, said standing order to remain in force for not less than fourteen (14) consecutive days; and the parties hereto further mutually covenant and agree that the mini-  
mum price at which any additional "talking motion pic-  
tures" shall be leased subsequent to the filling of a stand-  
ing order shall be the same per running foot as the pictures  
4 furnished on such standing order, unless otherwise provided for in such scale of prices. All positive "talking motion pictures" which may be hereafter leased by the Licensee to persons not having a standing order, as above defined, shall in every case be leased at not less than the list prices which may be provided in said scale of prices.

11. The Licensee further covenants and agrees that positive "talking motion pictures" made by or for the Licensee and unsold prior to the date hereof, shall be subject to the scales of prices provided for in Paragraph 9,

and shall be leased or furnished for use by the Licensee at not less than the prices fixed in the said scale of prices. 1

12. The Licensee further covenants and agrees not to lease, or furnish for use, "talking motion pictures" under any circumstances, either directly or indirectly, during the continuance of this agreement, at lower prices than those fixed and established by the Licensors, as provided for in Paragraph 9.

13. The Licensee further covenants and agrees that it will not exhibit, or lease, or offer for lease, second-hand or used positive "talking motion pictures" which are damaged or worn so as to be unfit for use in giving exhibitions thereof. 2

14. The Licensee further covenants and agrees that all leases of positive "talking motion pictures" shall be at the prices hereinbefore provided for without the allowance of any discounts or rebates or other reduction by which the lessee might acquire positive "talking motion pictures" at lower prices than those herein provided for. The Licensee further covenants and agrees that it will not sell or rent or offer for sale or rent other goods or merchandise, including projecting machines, sound reproducing devices or motion picture exhibiting and sound record synchronizing devices, at less than current prices in order to induce the lease of positive "talking motion pictures." 3

The Licensee further covenants and agrees that in determining the rate which it charges to any theatre to which it supplies a complete service for the exhibition of "talking motion pictures," including the positive "talking motion pictures" and the necessary exhibiting and sound reproducing devices, with or without the operator therefor, it will charge such prices for the use of such devices and the services of such operator as not to permit or effect the lease or rental of positive "talking motion pictures" at rates lower than those provided for in paragraph 9 hereof. 4

15. The Licensee further covenants and agrees that it will dispose of the positive "talking motion pictures" manufactured, imported, produced or printed by it, only by the lease thereof to lessees for the purpose of sub-leasing or

1 directly to exhibitors for the purpose of giving exhibitions thereof.

2 The Licensee further covenants and agrees that no lease of positive "talking motion pictures" shall be made by it to any lessee for the purpose of sub-leasing, except upon and subject to the following terms and conditions, the substance of which (with the exception of the condition as to the return of positive "talking motion pictures") hereinafter referred to, shall be expressed in a printed notice on the labels as provided for in Paragraph 7, accompanying each positive "talking motion picture," namely; (1) that such "talking motion picture" shall at all times be used in connection with the sound record furnished by the Licensee with the said picture and only on synchronized motion picture exhibiting and sound reproducing apparatus, the synchronizing devices of which have been made or imported by the Licensee and the motion picture projecting machines of which are licensed by the Licensor under the said Letters Patent Nos. 578,185; 580,749; 586,953; 588,916; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205 and 785,237, or one or more of them under any other letters patent that it may hereafter acquire or control; and (2) that the lessee shall not make or permit others to make any reproduction, commonly known as a "dupe" of such positive talking motion picture or any other positive motion picture containing the invention of said reissued Letters Patent No. 12,192; and (3) that the lessee shall not sub-lease the same or any other positive motion picture on film of a greater width than approximately one inch (1"), containing the inventions of said reissued Letters Patent No. 12,192, for use in giving motion picture exhibitions until such lessee has entered into an agreement in writing with the Licensor containing terms and conditions to be prescribed therein by it, and only while such lessee complies with all such terms and conditions and while such agreement remains in force and effect; and (4) that the lessee of such positive "talking motion picture" shall not remove the trademark or tradename or title therefrom, and (5) that the lessee shall return to the Licensee (without any payment therefor, except the transportation charges incident to the return of the same) on the first of every month, beginning with September 1, 1909, an amount of positive "talking motion pictures" (not leased by the Licensee over twelve months before) and of the make of the



Licensee, equal to the amount that was so leased during the seventh month preceding the date of each such return, with the exception, however, that where any such positive "talking motion pictures" are destroyed by fire or lost in transportation, and proof satisfactory to the Licensee as to such destruction or loss is furnished the amount so destroyed or lost shall be deducted from the amount to be returned as aforesaid, and (6) That the violation of any of the foregoing conditions, including the terms and conditions of the agreement referred to in condition 3, entitles the lessor to immediate possession of such "talking motion picture" without liability for any price which the lessee or the person in whose possession it is found may have paid therefor.

The Licensor further covenants and agrees to enter into an agreement for the sub-leasing of the positive "talking motion pictures," made or imported by the Licensee, with any person, firm or corporation, designated by the Licensee, provided such person, firm or corporation requests such agreement and has not violated any agreement with the Licensor or with any manufacturer or importer of motion pictures or projecting machines licensed by it, and further covenants and agrees that such agreement shall contain no terms inconsistent with the terms of this agreement, except by and with the mutual consent of the Licensee and the Licensor.

The Licensee further covenants and agrees that no positive "talking motion picture" shall be leased by it directly to any exhibitor for the purpose of giving exhibitions thereof, except on and subject to the following terms and conditions, which the Licensee shall embody in any contract which it shall make with such exhibitor namely: (1) That the exhibitor shall use such "talking motion picture" at all times in connection with the sound record furnished by the Licensee with such picture and only on synchronized motion picture exhibiting and sound reproducing apparatus, the synchronizing devices of which have been made or imported by the Licensee, and the motion picture projecting machines of which are licensed by the Licensor under the said Letters Patent Nos. 578,185; 580,749; 586,953; 588,916; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205 and 785,237, or one or more of them, or under any other letters patent that it may hereafter acquire or control; and

- 1 (2) that the exhibitor shall not make or permit others to make any reproductions commonly known as a "dupe" of such positive "talking motion pictures" or any other positive motion picture containing the invention of said re-issued Letters Patent No. 12,192; and (3) that the exhibitor shall not sell or sub-lease or otherwise dispose of such "talking motion picture"; and (4) that the exhibitor shall not remove the trademark or tradename or title from such positive "talking motion picture."

- 2 The Licensee further covenants and agrees that it will not lease any "talking motion pictures" to any exhibitor unless each motion picture projecting machine on which motion pictures are used by such exhibitor is regularly licensed by the Licensor and the license fees therefor are paid; and that the Licensee shall before supplying such exhibitor with "talking motion pictures" mail to the Licensor at its office in New York City, a notice, giving the name of the exhibitor, the name and location of the place of exhibition (and, if requested to do so by the Licensor, its seating capacity, hours of exhibition and price of admission, and the number and make of the licensed projecting machine or machines), together with the date of commencement of the said leasing of "talking motion pictures" all in a form approved by the Licensor. The Licensee, when properly notified by the Licensor that the License fees of any exhibitor for any projecting machine have not been paid and that the license for such projecting machine is terminated, shall immediately cease to supply such exhibitor with "talking motion pictures".

- 4 The Licensee further covenants and agrees not to use "talking motion pictures" of its manufacture or importation in any theatre or place of exhibition owned or leased or controlled in whole or in part by it, with the exception however, that the Licensee shall be at liberty to give exhibitions of such "talking motion pictures" without profit directly or indirectly and to possible or prospective lessees thereof.

16. The Licensee further covenants and agrees not to knowingly allow "talking motion pictures" manufactured or imported by the Licensee under this agreement to be used or leased for use with any exhibiting or projecting machines not licensed by the Licensor under Letters Patent owned or

controlled by it except by and with the consent of the Licensor. The Licensee also covenants and agrees to refrain from supplying such "talking motion pictures" manufactured under this agreement to any exhibitor who uses such pictures in violation of the conditions set forth in paragraph 15, or for use with any exhibiting or projecting machine, the license for which under the aforesaid Letters Patent has been terminated and after the Licensee has been notified of such termination by the Licensor. The Licensee also covenants and agrees, on notice from the Licensor, to refrain from supplying such "talking motion pictures" to any lessee who continues to sublet such "talking motion pictures" to persons, firms or corporations using the same in exhibiting or projecting machines not licensed by the Licensor as aforesaid, or the license for which has been terminated, or who use the said "talking motion pictures" in violation of any of the conditions set forth in Paragraph 15. The Licensor covenants and agrees to promptly notify any such lessee who may so sublet such "talking motion picture" after it has knowledge of any such sub-letting, and to notify the Licensee and the additional licensees of the Licensor of the termination of any license for the use of any exhibiting or projecting machines under the aforesaid Letters Patent, or any of them, and of any such lessee who may so sub-let such motion pictures after being notified by it not to do so; and the Licensor further agrees to compel all such additional licensees to refrain from supplying motion pictures for use with any such exhibiting or projecting machines, the license for which has been so terminated, or to any such lessee.

17. The Licensor and Licensee further mutually covenant and agree that if in any case suit is brought upon said reissued Letters Patent Nos. 12,037 and 12,192, or said Letters Patent Nos. 586,953 or 722,382, either of the claims of said reissued Letters Patent No. 12,192 or either of the first, second, or third claims of said reissued Letters Patent No. 12,037, or any of the claims in issue in any such suit upon said Letters Patent Nos. 586,953 or 722,382, is or are held invalid by a court that last hears and decides such suit, or should be held by such court not to be infringed, then, and in any such case, the Licensee may at once terminate this agreement and the license thereby granted, by giving notice of its election so to do by the Licensor.



1        18. It is further mutually covenanted and agreed by and  
between the Licensors and Licensee that unless sooner ter-  
minated as hereinbefore or hereinafter provided, this agree-  
ment and the license granted thereby shall take effect on the  
day and year first above written, and shall continue until  
June 20, 1910, but that the Licensee may renew this agree-  
ment and license thereafter from year to year upon the same  
terms, conditions and stipulations as herein provided, by giv-  
ing notice to the Licensors on or before April 20th of each  
year, beginning with the year 1910, of the Licensee's election  
2        to so renew this agreement and license, and upon the giving  
of each such notice this agreement and the license thereby  
granted shall be considered and treated by the Licensors and  
Licensee as renewed for a period of one year, beginning June  
20th of the year following such notice, except that the last  
renewal period shall be for the period from June 20th, 1914,  
to August 26th, 1919, the date of expiration of the Letters  
Patent No. 707,934.

3        It is further mutually covenanted and agreed by and  
between the Licensors and Licensee that if, during said  
original term or during any such renewal period, either  
party should, knowingly or through gross neglect or care-  
lessness, be guilty of a breach, violation or non-perform-  
ance of its covenants, conditions and stipulations, result-  
ing in substantial injury to the other party, and should,  
for the period of forty (40) days after notice thereof from  
the other party, persist therein or fail to correct, repair or  
remedy the same, then in such case the party aggrieved  
may terminate this agreement by giving notice in writing  
to the guilty party of its intention so to do. It is, how-  
ever, mutually covenanted and agreed by and between the  
Licensors and Licensee that if the guilty party should cor-  
rect, repair or remedy such breach, violation or non-per-  
4        formance of its covenants, conditions and stipulations with-  
in the said period of forty (40) days after such notice, and  
should thereafter knowingly or through gross neglect or  
carelessness be guilty of a second breach, violation or non-  
performance of its covenants, conditions and stipulations,  
resulting in substantial injury to the other party, then and  
in such case, the party aggrieved may terminate this agree-  
ment by giving thirty (30) days' notice in writing to the

guilty party of its intention so to do. Such termination of the agreement, however, shall not prejudice either party hereto in the recovery of damages because of any such breach, violation or non-conformance by the other party hereto.

19. All notices provided for in this agreement shall be in writing and shall be given by delivering the same to the Licensor or Licensee, as the case may be, or to an officer of the Licensor or Licensee, as the case may be, or by depositing such notice, postage prepaid, in any Post-office of the United States, in a sealed envelope, directed to the Licensor or the Licensee, as the case may be, at its last known Post-office address, to be forwarded by registered mail.

20. It is mutually covenanted and agreed by and between the Licensor and Licensee that after notice of the termination of this agreement and the license granted thereby by either party, as provided for in Paragraphs 19 and 21 of this agreement, and after the same have been terminated, no matter what the cause or manner of termination may be, neither this license agreement, nor the fact that the Licensee has entered into or acted under it, shall be used in any manner directly or indirectly, by or for the Licensor, its successors, assigns or legal representatives, or by or for others with its or their consent or permission, against the Licensee, or the Licensee's successors or legal representatives, in any litigation, controversy or proceeding involving the Licensee or them or any other persons, firms or corporations, or in any other way, it being understood and agreed that upon such termination the positions and rights of the Licensor and Licensee shall be the same as if this agreement had not been made; Provided, however, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any breach or other violation of this agreement by the other occurring prior to such termination.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers duly

- 1 authorized to perform these acts, the day and year first above written.

## MOTION PICTURE PATENTS COMPANY

By Frank L. Dyer,  
President.

Attest:

George F. Scull,  
[SEAL.] Secretary.

## GAUMONT COMPANY,

By L. Gaumont,  
President.

2

Attest:

H. Blache,  
[SEAL.] Secretary.

The Witness, William Pelzer, was excused until 10:30 o'clock A. M., January 24, 1913.

3

Thereupon, LOUIS ROSENBLUH, resumed the stand.

Direct examination (continued) by Mr. GROSVENOR:

Q. Mr. Rosenbluh, during the period that you have been operating an exchange licensed by the Patents Company, have the customers, that is, the exhibitors who have taken service from you, had their licenses cancelled from time to time by the Patents Company? A. Yes, sir.

Q. Have such licenses been cancelled at times since the incorporation of the General Film Company? A. Yes, sir.

Q. That is, since April, 1910? A. Yes, sir.

4

Q. Have you made efforts from time to time to have such exhibitors, your customers, reinstated? A. Yes, sir.

Q. State what you have done in this connection, and what effect, if any, the organization of the General Film Company, or its branches, in competition with you has had upon such efforts as you have made? A. In the majority of cases where a cancellation of a customer's license of the Greater New York Film Company, was made, the customer found it difficult to have its license reinstated, and



invariably when he applied to one of the branches of the General Film Company he had no difficulty in being reinstated—it seemed to favor the General Film Company in the reinstatement of customers; and it got to be so that it was rumored in the trade, especially by some of the solicitors going around to see customers that had their licenses cancelled, making the statement, “Why, if you come with the General Film Company, we will get your license without any difficulty.” 1

Mr. CALDWELL: I object to the question as calling for and stating matters obviously not within the personal knowledge of the witness and hearsay, and I move to strike the answer out. 2

Q. Have you finished your answer, all you had to say on that subject? A. We found that those things were carried out, because a short space intervened between the date of cancellation and the date of notice to resume service, when it was an account cancelled by the General Film Company, and when he made application for service to the General Film Company, although the customer of the Greater New York Film Rental Company. In most cases, when the man showed a willingness to do business with the Greater New York Film Company, they were not quite so anxious to consider his application, and told him to come around some other time, or exacted an agreement to continue the use of licensed film for a period of time, or to pay a certain number of weeks' royalties in advance, to insure that his intentions were to remain a licensee. 3

Mr. CALDWELL: Objection is made upon the same grounds to this question and answer as heretofore stated. 4

The Witness: In several cases we had to pay these advance royalties for the exhibitor to be able to get his license reinstated.

Mr. CALDWELL: I make the same objections to this statement of the witness, and also the motion to strike it out.

1 Q. Are there any ways in which the business of your company has been affected through the creation of the General Film Company or any other methods of competition of the latter company, which have affected your company? A. Persistent rumors were constantly afloat with regard to the condition of the business of the Greater New York Film Rental Company. At one time it was said that their license was to be cancelled within a very short period of time.

2 Mr. CALDWELL: I object to that question and answer as involving entirely hearsay and incompetent.

Q. When was this? A. It started about 1910, about July and August, 1910.

Q. Were two of the New York licensed exchanges cancelled about that time?

Mr. CALDWELL: I object to this question on the same grounds heretofore stated, and because leading.

3 A. Yes, sir.

Q. And about that time others were sold out to the General Film Company?

Mr. CALDWELL: I object to that question on the same ground.

A. Yes, sir.

4 Q. Please continue, Mr. Rosenbluh? A. Exhibitors approached me and asked whether or not it was true that we were to lose our license since they wanted to be protected; that they had been approached by representatives who claimed that they represented the General Film Company and had advanced information that the Greater New York Film Company's license was to be cancelled, and that they had better make arrangements immediately and come in while there was plenty of goods on hand to supply them; that is, if they waited that they might not be in position to get as good an arrangement after the choice goods were taken up.

Mr. CALDWELL: I desire to make the same ob-

jections and motions in reference to this answer 1  
that have heretofore been made.

A. These rumors persisted, and were carried on until a few weeks before November, when again it was stated that they had positive information now that the license would be cancelled. Again the exhibitors were afraid to make arrangements with our company for fear that they would be cut off from service at any time, and they had already had an experience when the other two licensed exchanges had their licenses cancelled and they found it difficult to make suitable arrangements for their immediate service, and we continually had this matter to contend with. A great many of our customers did leave us from time to time for this reason. When the Court proceedings were started— 2

Q. (Interrupting): You mean, by your company? A. By our company.

Q. After the cancellation of your license in December, 1911? A. Yes, sir—these methods of competition changed to the use of service which was not according to the regular prices and which was supplied to exhibitors who were in competition with exhibitors doing business with our company. 3

Q. In what way were the methods of service changed? A. A man would pay, we will say, fifty dollars—

Q. (Interrupting): An exhibitor? A. Yes, sir, and he would be entitled to a certain number of reels of various ages for that given amount. Invariably when they tried to carry out this unfair competition they would give other customers in the vicinity of our exhibitor much better service than they would be entitled to for that amount and advertise that fact among the trade that that would be the manner or method that they would pursue in the future and that that exhibitor had better make other arrangements with the General Film Company if he did not want their displeasure. In several instances, these matters have been called to my attention and I have sent messengers to these various theatres and had the program copied and compared. 4

Q. That is, to those theatres whom you state were specially favored by the General Film Company? A. Yes, sir.



1           Mr. CALDWELL: I desire to object here to the entire series of questions and answers of the witness that have followed my last objections, on the same grounds that I have heretofore stated, and on the further ground that the witness is now being led.

2           The Witness: In a particular case brought to my attention in New Haven, one of the theatres known as the Grand Opera House Theatre, having about 2,000 seats, and another new theatre opened up by Poli, who has a number of theatres through the New England States, and through Pennsylvania--

Q. He has a vaudeville stock company? A. Yes, sir, and opened up a large theatre, and made arrangements for service to be supplied by our company, so that they could be easily supplied between the accounts that I already had from theatres who were in close competition.

3           Q. Who do you mean by other theatres? A. Poli's theatres. I did take up that service and had been doing so for several weeks when one of the accounts which the General Film Company had been supplying came out with four first run films, a service that would ordinarily be worth, I should judge, about \$300 or more; this theatre had a seating capacity of 299, which from my experience I know to be impossible to pay any such price for service.

Q. Was this \$300 per week? A. Yes, sir.

Mr. CALDWELL: It is understood that my objections apply to all of these questions, as well as my motions to all of the answer of the witness.

Mr. GROSVENOR: Yes.

4           The Witness: We had the names supplied to us each day of what pictures had been shown there and it kept up for several weeks. The statement was made by the branch manager that he would continue to do so until he would put the Greater New York Film Company out of business. Then another exhibitor in New Haven showed a willingness to do business with the Greater New York Film Company.

Q. You mean a customer of yours? A. No, another customer of the General Film Company showed a willingness

to do business with the Greater New York Film Company. This branch manager, whose name was Mr. Ettriss, connected with the 17th Street branch of the General Film Company, wrote a letter to the exhibitor upon receiving notice from him that he intended to terminate his business dealings with that company at the end of the week, that he was surprised that he, as an exhibitor, should make arrangements with a company who does not supply all the specialties that are advertised, and which every up to date exhibitor should have to remain in business, and that if he saw fit to carry out his intention that they would certainly protect their other remaining exhibitors in his vicinity and would supply such service as would not be available to him—

Mr. CALDWELL: I renew my former objections and motions to this question and answer, and object now on the ground that the witness is giving the contents of letters, without production of the letters.

Q. They were the specialties you testified yesterday you were unable to obtain? A. Yes, sir. Several months ago, we had taken, or at least our company had taken on an exhibitor who had made arrangements for a reel run film, and was willing to pay the proper price, in my estimation, for such a film. After having served him for two weeks we received a card from the Motion Picture Patents Company advising us that the license for this exhibitor had not been considered favorably, and that we were to terminate service at the end of that week. This exhibitor then went to the Patents Company to inquire why such service was denied him, and he came back and told me that the information he received at the office of the Patents Company was that he was competing against customers supplied by the General Film Company, and that they had complained to their various branch office managers that unless the service was discontinued that they would have to discontinue business with the General Film Company, and for that reason they thought they would rather discontinue doing business with the Greater New York Film Company. This particular exhibitor then came again at a later date and told me that he was approached by representatives of the General Film Company who assured him if he wanted to do business

- 1 with the General Film Company, he could procure licensed film. This exhibitor at a later date came to me again and said if such was the case, that if the General Film Company could supply him and we could not do so, and asked that we make application for him, and I did write such a letter to the Motion Picture Patents Company, and we never received any reply, and this exhibitor has never received any licensed film since.

- 2 Mr. CALDWELL: My objections heretofore made apply to all of these questions and my motions to all of the answers.

Mr. GROSVENOR: All right.

Mr. WILLIS: For the reason that it is an attempt to repeat conversation that he had with a third party being hearsay.

Mr. GROSVENOR: This examination is for the purpose of showing the conditions in the trade, and the difficulties the witness encountered in doing the business he has described.

- 3 The Witness: Another instance brought to my particular attention was, several weeks ago, an exhibitor had bought a place. In that theatre, the previous owner had violated some of the rules of the Patents Company, and for that reason the license was cancelled. He, as a new owner, applied, after running the place for about six months, to be supplied with licensed service. We made the application for the privilege to supply in the regular way, and the privilege was granted on the assurance that it was a new owner, and proper proof being shown that it was a new owner, and not one that had violated before.

- 4 Immediately after starting the film service, the exhibitors in the vicinity, who were then supplied by the General Film Company, approached this man and said that they were told to inform him that unless he made his arrangements with the General Film Company, he would be a sorry man for having made his arrangements with the Greater New York Film Rental Company. He wanted to know the reason, and they assured him that he would see the reason in a very short time.

The exhibitors in that vicinity were supplied with a particular kind of run for several months, which was



known as the two-day-old, a fourteen-day old and a twenty-five-day old. Three exhibitors dividing the releases among themselves. Just as soon as this exhibitor continued to do business with the Greater New York Film Rental Company, the General Film Company supplied in addition to that regular run, a first run to each and every one of those three, in addition to the regular service, without charging any additional money. So the exhibitors informed the man doing business with us. This man came down to me and asked why we could not do the same thing. I told him we had to pay for our goods, and we could not give the goods away without any charge. We then investigated the matter, and we found that although the exchange that was doing business with these various accounts, did not have the first runs of their own, they went to each and every one of the exchanges and collected any first runs that they had on their shelves or did not have any contracts for—

Q. (Interrupting): You mean that one branch of the General Film Company went to another branch of the General Film Company and got the films? A. Yes, sir. This, to my knowledge, is a violation, and for which violation exchanges previously had their licenses cancelled, but it does not seem as though the General Film Company has any rules to live up to, according to these methods.

Mr. WILLIS: The same objection.

Q. Let me direct your attention to Petitioner's Exhibit No. 19, record page 70: "Recently complaints have been made to the Patents Company that films leased by some exchanges are loaned by those exchanges to their branch offices or to other exchanges. Such lending or exchanging of films is a violation of the Exchange License Agreement, and exchanges found guilty of this practice, after this notice, will be required to show cause to the Patents Company why their licenses should not be cancelled." That is contained in Exchange Bulletin No. 8. Is that the rule to which you refer, that the licensed exchanges were not allowed to exchange their films or to exchange the film between the branches of the same exchange? A. Yes, sir.

Q. Is that rule observed by the General Film Company today? A. No, sir. And there is one other rule that was particularly brought out, that no two exchanges were to

1 supply one account at the same time. I maintain that there is another violation.

Q. In these instances that you have mentioned, did different branches of the General Film Company supply the same exhibitor? A. Yes, sir. Bulletin No. 10 provides for that.

2 Q. Bulletin No. 10 is printed in the record, page 71, also Bulletin No. 22, page 76 of the record, Petitioner's Exhibit No. 25, says: "The licenses of the following exchanges have been cancelled for supplying licensed films to exhibitors whose royalties have not been forwarded to this Company, for exchanging films and for failure to take proper precautions to prevent licensed films from passing into the hands of unlicensed persons: Miles Brothers, Incorporated, at Baltimore, Maryland; Imperial Film Exchange at New York, Troy, New York, Washington, D. C." That is the same thing? That matter of exchanging film to which you refer? A. Yes, sir. It has also another effect. The fact that they can interchange the film does not require each exchange to expend all the money that is necessary to buy the complete output, which gives them an advantage of regulating their prices for the supply of the service.

3 Q. That is, if the exchange has obtained a reel, and none of its exhibitor customers needs that reel for a certain day, it might loan it to another exchange for use by a customer of the other exchange, is that what you mean? A. Correct.

Q. Before the formation of the Patents Company, state whether or not it was the fact that George Kleine had compiled a catalogue or a book with lists of titles of films, and that was issued to the trade, so that the different exchanges might order from the catalogue such films as they desired. Is that correct? A. Yes, sir.

4 Q. State whether or not it is possible for any exchange today to go to any house, or place of doing business and find any catalogue of films, and order such films as it may desire. A. I don't know of any concern. It would be impractical under the present rulings of the manufacturers to return films, and to make up subjects at a loss would be impractical, as films are continuously taken out of stock and returned.

Q. Under present conditions, there is no place where a rental exchange or an exhibitor can go and look at a long list of titles and order such as he desires, is that right? A. Yes, sir.

Q. His supply is limited to the weekly productions,

or the daily productions, or what is known as the different releases coming out from time to time? A. Yes, sir. Of course, I might add that an exchange has the privilege of ordering any particular picture to be reproduced after a few months after it was originally put on the market, but there is not any use for such film, because it cannot be used successfully and profitably for the exchange. To use it once or twice, nobody will pay sufficient for it. 1

Q. And one exchange cannot go to another exchange and ask for the loan for such a film for a day or two? A. No, sir. 2

Q. Or obtain it at a nominal price? A.No, sir.

Q. Are these projecting machines today sold to the exhibitors regardless whether they are so-called licensed exhibitors or not? A. They have always been sold that way, today as any other time. There has never been any distinction in the sale of the machine as to whether or not it is going to be used at any particular theatre or place.

Q. The theatre which does not obtain the so-called licensed film gets the machine but pays no weekly tax, is that right? A. Yes, sir. 3

Q. Then the tax or weekly fee of \$2.00, or royalty, is not based, as a matter of fact, upon the kind of machine in the possession of the exhibitor, but is based upon the source of supply of film used by the exhibitor? A. The royalty is paid only while licensed film is supplied to a theatre.

Q. Yesterday you referred to a notice sent out by Mr. Dyer, relating to the return of licensed film in the year 1908, during the period of the Edison licensees. That was objected to on the ground that you stated the contents of a notice without the production of the same. Is this paper which I show you, being a printed Bulletin entitled "Bulletin No. 27" dated October 5th, 1908, signed "Frank L. Dyer, General Counsel" the paper to which you refer (handing paper to witness)? A. (Witness examining paper): Yes, sir. 4

MR. GROSVENOR: This bulletin is introduced in evidence, and counsel refers to the testimony of the



1 witness on page 361 of the record and Mr. Caldwell's objection in folio 1 of that page.

The paper is marked Petitioner's Exhibit No. 97, and is as follows:

**Petitioner's Exhibit No. 97.**

**ALL BULLETINS SHOULD BE FILED.**

Bulletin No. 27.

October 5, 1908.

2 **FILM SERVICE ASSOCIATION.**

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Note.—Bulletins issued by the Executive Committee are private communications to members of the Association only.

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**RETURN OF FILM POSTPONED TO JANUARY 1, 1909.**

3 The following letter, which explains itself, has just been received at the Association Office:

Edison Manufacturing Company, Orange, N. J.,  
October 3rd, 1908.

Dwight Macdonald, Esq.,  
Secretary Film Service Association,  
15 William Street, New York, N. Y.

Dear Sir:

4

I have to inform you that the manufacturers of licensed film have decided to extend the time for the enforcement of the return of old film purchased from them, which should have begun October 1st, under the agreements to the exchanges, to January 1st, 1909, the manufacturers believing that this will be a concession to the exchanges.

Yours very truly,

FRANK L. DYER,  
General Counsel.

Mr. CALDWELL: My objection is now with- 1  
drawn.

Q. You have produced certain papers, Mr. Rosenbluh; I show you a printed form of paper entitled "order" being an agreement with an exhibitor, whose name is filled in. State whether that is the form of contract for service between the licensed exhibitor and a licensed exchange, which has been in force since the creation of the Patents Company? A. This form of contract (indicating) or order, has been used during the year 1908, and some time in 1909. We have then changed it after our supply of this form ran out, to the contents, or most important sub- 2  
jects thereof, and got it up in typewritten form.

Mr. GROSVENOR: I offer it in evidence.  
The paper is marked Petitioner's Exhibit No.  
98.

**Petitioner's Exhibit No. 98.**

ORDER. 3

Aug 2 1909

1. Name of Owner of Place of Exhibition Solomon Slaff
2. Names of Partners (if a firm) or of Officers (if a Cor-  
poration).

.....  
.....

3. State of Incorporation (if a corporation) .....  
Date of Incorporation .....

4. Name of Place of Exhibition Nicolett  
Address No. 187 Passaic Street, City of Passaic State  
of N. J.

5. Number of Reels to be furnished Per Week, 24

## 1 6. Days of Changes and Number of Reels each Change.

Number of Reels and Days of Change	Mon- day	Tues- day	Wednes- day	Thurs- day	Fri- day	Satur- day	Sun- day
	4	4	4	4	4	4	

(Write under each day correct Number of Reels Changed on that Day.)

Shipments to be made by .....Express.

Service to begin the ..... day of .....1908.  
(Date) (Month)

2 For this Service, the undersigned will pay the sum of  
\$50 & 2 per week and all transportation charges both ways.

SOLOMON SLAFF,

Signature of EXHIBITOR, Owner, Partner or  
Officer of Corporation.

4-6-14-21-2C

### CONDITIONS.

3 Licensed motion pictures manufactured by Edison Manufacturing Company, Essanay Company, Kalem Company, S. Lubin, Geo. Melies, Pathe Freres, Selig Polyscope Company, and Vitagraph Company, under the Edison Patents are rented by the Exchange subject to the following uniform conditions only:

1. From the date of this agreement, the exhibitor shall show in all places of exhibition owned or controlled by the exhibitor, only licensed motion pictures manufactured by the above named manufacturers. A list of all exchanges from whom licensed motion pictures may be had will be furnished by any one of the above manufacturers upon request.

2. The exhibitor shall not sub-rent or loan any motion pictures furnished under this contract, but shall use them only for exhibition at the place specified in the order.

3. The exhibitor shall not make, nor cause to be made, nor permit others to make, reproductions or so-called



“duplicates” of any motion picture films, nor exhibit, sell, rent, loan, or otherwise dispose of or deal in such reproductions or “duplicates.” 1

4. The exhibitor shall not remove the trade-mark or trade-name or title from any motion picture film, or permit others to do so.

5. The exhibitor shall return as directed by the exchange, all motion pictures, immediately after they have been exhibited for the period provided for in the order; but if said motion pictures are retained after the time for which they are furnished, the exhibitor shall pay for such over-time an additional sum per day proportionate to the price specified in the order, for each reel or reels retained after the period for which such reel or reels are furnished. 2

6. All reels rented to the exhibitor remain the property of the exchange under all circumstances, and when a reel is damaged in any way, all that remains of it must be returned to the exchange in order that the amount of the damage may be ascertained. The exhibitor shall be liable to the exchange for the value of any and all reels lost or destroyed and for all damage (reasonable wear and tear excepted) to any reel or reels while in the possession or control of the exhibitor, in a sum to be fixed by the exchange in each case and not to exceed one hundred and twenty-five dollars for each reel lost, destroyed or damaged. 3

7. The exchange shall be deemed to have made a delivery of all reels ordered by the exhibitor when said reels are delivered properly directed to any common carrier (or an authorized agent of the exhibitor) in time for said reels to reach (under ordinary circumstances) their destination on the day or days provided for in the order. The exchange shall be liable for damage sustained by the exhibitor because of any negligence of the exchange resulting in non-performance by the exchange of this contract in a sum not to exceed the amount of the rental for the period of non-performance. 4

- 1        8. The exhibitor in the event of the closing of the place of exhibition for which the service is furnished, for any cause whatsoever, shall immediately telegraph the exchange to stop further shipment; and if the closing of the Place of Exhibition is *bona fide* and due to accident or failure in business, the receipt by the exchange of said telegram shall operate as a cancellation of said order, and the exchange in such case shall be entitled only to the rental on reels actually delivered and accepted by the exhibitor, and only to damages for reels, not recovered, or not returned in the time provided for in this contract, or
- 2        for reels returned in a damaged condition (reasonable wear and tear excepted).

### Agreement.

- 3        In consideration of the rental of motion pictures to me/us at the prices stated in the above order and after carefully reading the above conditions, which together with the said order are to be taken and read with and as a part of this agreement, I/we hereby covenant and agree with the exchange to conform with, and strictly adhere to, and be bound by the same, nor to do or suffer any of the acts or things hereby prohibited.

Signed .....

Street and No. ....

City ..... State .....

Date .....

Accepted for:

..... (Exchange.)

- 4        By.....

## Contract for Service

1

.....  
Exchange

With

.....  
Exhibitor.

.....  
Place of Exhibition.

.....  
Address.

2

.....  
Date Service Begins.

---

Guarantee.

In consideration of One Dollar and other good and valuable considerations and the execution of the within contract, between the exhibitor .....  
and the exchange ..... to induce  
which this guarantee is made, the undersigned hereby  
guarantees the full and complete performance of the above  
contract according to its terms by .....  
the exhibitor, and also guarantees the payment when due, of  
all rentals, including rentals charged for reels retained by  
the exhibitor beyond the time specified in the above con-  
tract, and also the payment when due of all penalties, for-  
feitures and other sums that may become due to the ex-  
change, pursuant to the terms of said contract.

3

The total liability of the undersigned under this guar-  
antee shall not exceed the sum of .....  
..... and 00/100 Dollars.

4

Signed this ..... day of ....., 190...,  
at ....., in the County of .....,  
State of .....

In presence of:

..... [Seal]  
Witness. Guarantor.

..... [Seal]  
Witness. Guarantor.



- 1      The above is to be filled out by a bank or business house, or individual having a satisfactory rating in Dun's or Bradstreet's or by an individual or business house owning real estate. In the latter case, a statement of the location of the real estate must be given as follows:

Statement of Guarantors.

- 2      The undersigned is the owner of real estate situated at  
 No. .... Street, Avenue, at .....  
 in the County of ..... State of .....  
 consisting of (describe property) : .....  
 .....  
 valued at \$. .... over and above all incumbrances.  
 .....  
 (Guarantor No. 1 sign here.)

- 3      The undersigned is the owner of real estate situated at  
 No. .... Street, Avenue, at .....  
 in the County of ..... State of .....  
 consisting of (describe property) : .....  
 .....  
 valued at \$. .... over and above all incumbrances.  
 .....  
 (Guarantor No. 2 sign here.)

---

By Mr. GROSVENOR:

Q. That was gotten up in the period of the Film Service Association? A. Yes, sir.

- 4      Mr. GROSVENOR: The witness has produced certain bulletins of the Film Service Association, of which I introduce the following or parts thereof. Bulletin No. 1 of February 14, 1909, the paragraph marked 3.

Mr. CALDWELL: The introduction of the bulletins of the Film Service Association is objected to on the ground that they are irrelevant, immaterial and not binding on any of the defendants in this action.

Mr. GROSVENOR: Counsel for the Government proved the membership of that association yesterday, pages 343 to 348 of the record, showing on page 348 membership in the Film Service Association on the part of nine manufacturers. 1

The paper is marked Petitioner's Exhibit No. 99, and is as follows:

**Petitioner's Exhibit No. 99.**

Bulletin No. 1. 2

February 14, 1908.

**FILM SERVICE ASSOCIATION**

---

The attention of members is called to the following:

1. The inclosed blank must be filled out and sent by return mail to the Secretary. Use envelope enclosed.

2. All information or reports concerning "duping," rate cutting, etc., should be fully stated in a letter and sent without a moment's delay to the Secretary. 3

3. The words "Member of the Film Service Association, Exclusive Service, using only the films made by the following licensed manufacturers:

Edison Manufacturing Company,  
Essanay Company,  
Kalem Company,  
S. Lubin,  
G. Melies,  
Pathe Freres,  
Selig Polyscope Company,  
Vitagraph Company," 4

should appear on all stationery of members. No suggestion is offered as to how the statement should appear. It is

- 1 left to each member to set out the substance of the above, as will suit his ideas.

Copies of the minimum rental schedule are enclosed. The facts contained in it may be announced to exhibitors. The contracts for members with the manufacturers and the forms of contract and bonds for members to use with customers are being prepared and will be ready next week.

A statement for the exhibitors will be ready for distribution in a few days. It will review the whole situation and explain the reason for the change to be made, the entire responsibility for which is taken by the manufacturers.

- 2 **FILM SERVICE ASSOCIATION,**  
By D. Maconald, Secretary.

Note.—Information of a general character, and all matters needing the attention of members will be included in Bulletins issued by the Secretary, as it is impossible to address each member personally on all subjects.

Kindly read all Bulletins carefully and comply with the requests contained in them at the first possible moment.

3

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Mr. GROSVENOR: Bulletin No. 2, of February 24th, 1908, Paragraphs 2, 3, 4, 6 and 8.

Mr. CALDWELL: All of those bulletins are objected to upon the same grounds, and counsel states that he does not concede that Petitioner's Exhibit No. 90 is any proof that the film manufacturers were members of that association; in point of fact, he is advised that they were not.

- 4 Mr. GROSVENOR: The witness Swanson yesterday testified in the manner I have stated.

Bulletin No. 2 of February 24th, 1909, is marked Petitioner's Exhibit No. 100.



**Petitioner's Exhibit No. 100.**

1

Bulletin No. 2.

February 24, 1908.

FILM SERVICE ASSOCIATION

The attention of members is called to the following:

1. The words "A Member of The Film Service Association" are sufficient at the present time for an indication, to place upon the stationery and printed matter of members, and it has been suggested that this could be done, if stationery is already printed, by having a rubber stamp made and stamping the paper with it.

2

2. Each member will receive at his main office two hundred (200) copies, and at his branch office one hundred (100) copies, of a statement issued by the Edison Manufacturing Company to exhibitors. This statement should be at once mailed to all exhibitors on the mailing list of members and particularly to all exhibitors with whom a member is dealing. It is desirable that this statement should have the broadest possible circulation among exhibitors.

3

3. It is advisable that members at once, without waiting for March 1st, limit their purchase of film to the manufacturers, licensed under the Edison Patent.

4. The minimum rental schedule adopted by the Edison Company and the licensed manufacturers, fixing a minimum price for the sale of licensed film, may be printed and used by members in dealings with their customers according to the needs of each member. It has been found to be impracticable for the Association to print and distribute these in quantities, as each member knows just in what form and in what manner to put these out, in order to get the best results for its own business.

4

5. Members who have not already sent in information blanks properly filled should attend to completing these

1 blanks and mailing them to the Secretary at once, as the Secretary desires to complete the roll of the Association and have same published. This can not be done until all of the information blanks have been returned.

6. The contracts between the exchanges and the licensed manufacturers are now ready and all exchanges desiring to receive licensed film after March 1st should exchange contracts with the manufacturer with whom they desire to deal and register their standing orders at once.

2 7. Each member will receive a form to be used in placing standing orders, and one of these forms should be filled out for each standing order a member desires to place, and addressed to each manufacturer with whom the order is to be placed. The manufacturer in turn will accept the order upon the standing order blank furnished the manufacturer for that purpose.

3 8. The contracts to be used between the exchanges and the exhibitors will be issued this week and the new rental schedule is to go into effect Monday, March 2d. The principal provisions of the new contract for exhibitors will be that 14 days' notice must be given to cancel the contract, and that the exhibitor must use exclusively motion pictures, licensed under the Edison Patent. Other than these changes the contract is in the form generally in use at the present time.

FILM SERVICE ASSOCIATION,

By D. MacDonald, Secretary.

4

Mr. GROSVENOR: Bulletin No. 10, Paragraphs 1 and 2.

The paper is marked Petitioner's Exhibit No. 101 and is as follows:

**Petitioner's Exhibit No. 101.**

1

Bulletin No. 10

All Bulletins Should be Filed.

March 24, 1908.

**FILM SERVICE ASSOCIATION.**

**REPORT OF EXECUTIVE COMMITTEE MEETING.**

A meeting of the Executive Committee was held in New York City on March 21, 1908, and the following matters of importance were acted upon by the Committee: 2

1. The Executive Committee was advised by counsel of the Edison Company that bills of complaint on the Edison Film Patent have been filed as follows:

Through Messrs. Offield, Towle & Linthicum, of Chicago against Chicago concerns:

Geo. Kleine,  
Kleine Optical Co.

3

Proprietors of Nickelodeons.

Christ. Richlandson, 434 Milwaukee Avenue and 731 West North Avenue.

Wm. Marks, 731 West North Avenue and 777 West North Avenue.

J. T. Dorgan, 1056 Milwaukee Avenue.

Abe Nills, 439 South Halsted Street.

John Furla, 710 South Halsted Street.

J. H. Ferris, 276 South State Street.

D. E. Mulvey, 2950 South State Street.

4

Through J. Edgar Bull, New York, against the following concerns in New York City:

American Mutoscope & Biograph Co.

Sussfeld, Lorsch & Co., 37 Maiden Lane.



1 The Executive Committee was informed that counsel would proceed with the prosecution of further cases embracing other localities and a uniform policy will be adopted of pressing on suits wherever the evidence justifies action.

2 The Cleveland Film Renting Exchange at Cleveland, O., just prior to the Executive Committee's meeting, announced that it had gone over to the opposition and would use hereafter unlicensed film. C. H. Peckham, formerly a member of the Executive Committee, was replaced upon the Executive Committee by Wm. H. Swanson, of Chicago, Ill. Mr. Swanson attended the meeting on Saturday, the 21st, in place of Mr. Peckham.

---

Mr. GROSVENOR: Bulletin No. 14, April 20th, 1908, is offered in evidence.

The paper is marked Petitioner's Exhibit No. 102, and is as follows:

3

**Petitioner's Exhibit No. 102.**

ALL BULLETINS SHOULD BE FILED.

Bulletin No. 14.

April 20, 1908.

FILM SERVICE ASSOCIATION

4

Executive Committee Meeting.

The Executive Committee had a meeting in New York City on April 17th and 18th, at which time replies to Bulletin No. 12 which asked for an expression of opinion by members of the Association on the minimum rental schedule were taken up. Of 110 memberships, replies from which have been received, 90 had expressed themselves in favor of maintaining the schedule, and 20 had asked that it be withdrawn.

Of the 20 who wished the schedule withdrawn, a number stated that they were in favor of the schedule if it could be enforced, but complained that the schedule had not in all cases been enforced, and therefore had been a hardship on those members who were strictly living up to it. 1

The Committee investigated all of the complaints which had been sent in to the Secretary's office and came to the conclusion that while in the majority of cases the schedule was being lived up to, there were many instances where members were cutting prices, permitting their films to be sub-rented, and in some cases their films were getting into the hands of Exchanges who were not members of our Association and were renting unlicensed films. The Committee, after careful consideration, was satisfied that, while in some of these cases the action was deliberate, that there were many cases where members through carelessness or failure to properly supervise their business were permitting their employees to break the contracts which the Exchanges have with the manufacturers. 2

### EDISON COMPANY TO ENFORCE CONTRACTS. 3

The Edison Manufacturing Company, the owners of the patents under which the members of our Association are licensed, assumes the entire responsibility for enforcing the contracts between licensed manufacturers and our members under which we received licensed film. The Committee conferred with the Edison representatives and received every assurance that this Company would co-operate with the Committee in seeing that contracts between the Exchanges and the Manufacturers were uniformly enforced so that no exchange would have an advantage over another. It was agreed that any evidence which was submitted to the Secretary of the Association should be referred to the Edison Company for action, and that every complaint made should be thoroughly investigated, for which purpose the necessary staff should be retained. 4

For the present the efforts of the Executive Committee and the Edison Manufacturing Company will be devoted to investigating complaints and taking action in regard to any cases which will uphold the following propositions

- 1    which are the basis of the contract between the Licensed Manufacturers and the Exchanges:

I. Prevent Licensed Films from getting into the hands of Exchanges outside of our Association.

II. Prevent Sub-renting of Licensed Film.

III. Prevent the Rental of Licensed Film Below the Minimum Rental Schedule.

2      NEW YORK AND CHICAGO OFFICES.

In order to invite the active co-operation of all the members of the Association, and in order to systematize the manner of handling complaints, collections of accounts, etc., the Executive Committee has divided the United States into two parts. All complaints, collections, etc., from members of the Association from Pittsburg, Pa., and east of that point should be sent to the office of the Secretary in New York.

- 3      Within a short time an Executive Committee will open a second office for the Association in Chicago, in charge of an Assistant Secretary, to which office will be referred all complaints, collections, etc., from members west of Pittsburg. By this means the Executive Committee expects to effect a great saving of time and give to members in the West an office near at hand with which they can take up directly all matters in which they are interested.

EXHIBITORS USING UNLICENSED FILM.

- 4      All members of the Association will be furnished with information blanks upon which may be reported information regarding the exhibition of unlicensed film, and as soon as these blanks are received, members are requested to obtain this information as to cases in their localities.

The Edison Manufacturing Company propose to bring suits wherever they find violations of their patents.



## ADVERTISING.

1

Members in advertising in the trade papers should always mention the fact in the advertisement that they are members of the Film Service Association.

---

By Mr. GROSVENOR:

Q. Mr. Rosenbluh, I find here a notice to suspend service, addressed to the Elorado Theatre at 1297 Wilkins Avenue by the Motion Picture Patents Company, on an affidavit by John J. Whitman. Was that theatre one of your customers? A. Yes, sir. 2

Q. Please state the circumstances in connection with that cancellation? A. The exhibitor reported to me that he ran a particular picture known as "Esther and Mordecai" which was a Biblical subject, which he thought his neighborhood would require, or would like to see, and on Friday nights—

Q. (Interrupting): Was this a licensed film? A. It was a licensed film, but he procured it from some one who was not a licensed exchange; although we had the copy in our stock, he did not make any inquiry for it, but a friend of his who had a copy somehow in his possession, loaned it to him and he ran it off that evening in addition to his regular program, and for that violation his license was cancelled. He asked me why we refused to supply the service after the end of that week and I told him he would have to go to the office of the Motion Picture Patents Company and get his information there. That he did—and returned, and made a statement to me, which I asked him to sign. That is the statement (indicating). 3 4

Mr. CALDWELL: The answer is objected to on the ground it is conversations with a third party, hearsay.

By Mr. GROSVENOR:

Q. There are some papers relating to the Windsor Amusement Company, in the matter of supplying them with Biograph films. What is that incident? Do you recall? A.

- 1 After a period of time, the early part of 1912, I should judge for about three months, the Biograph Company refused to deliver film to us, and the exhibitors had been in the habit of making the regular display of Biographs and had advertised same extensively in front of their places. This particular exhibitor, the Windsor Theatre, had been showing Biograph reels every Friday evening, that being the best day for his business, he being in a Hebrew section, for a number of years. He showed this Biograph film seven days after release. And he found that after waiting two or three weeks,
- 2 we could assure him supplying Biographs within the near future, he would be compelled to make other arrangements, and as his information led him to believe that he could only get it from the General Film Company, he stated that he would have to go there to get his supply in the future.

Mr. CALDWELL: The question and answer is objected to on the ground it details conversations with a third party.

3 By Mr. GROSVENOR:

Q. Who was the President of the Biograph Company at that time? A. Mr. J. J. Kennedy.

Q. Is that the same Kennedy who is an officer of the General Film Company? A. Yes, sir.

Q. And the same Kennedy with whom the transaction was had regarding the proposed sale of your Company to the General Film Company? A. Yes, sir.

Q. And it was after your company had refused to sell to the General Film Company? A. Yes, sir.

4 Q. I mean, this difficulty in getting Biograph film? A. Yes, sir.

Q. And were there other complaints received by your rental exchange about this time, from other exhibitors? A. There was quite a number of complaints. Several received in written form, and a great many in conversation.

Q. Because of your failure to supply Biograph films? A. Yes, sir.

Q. Here is the letter dated July 13th, 1910, signed by the Motion Picture Patents Company, addressed to your company, relating to the Bohemian Hall, New York City. What

has that reference to? Does that refresh your recollection? 1  
Read the letter please (handing paper to witness). A. This  
exhibitor discontinued doing business with us for a period  
and when he again made application, we found in our files  
that a cancellation card had been sent out. We notified him  
that we could not take up his service unless he made applica-  
tion to the Motion Picture Patents Company to have his li-  
cense reinstated. He did go there, and came back and stated  
that the Patents Company exacted from him to pay six  
months' royalties in advance, which he refused to do, and  
stated that his company which was an association composed 2  
of membership of Bohemians, they would not consent to any  
such arrangement at all, and that if we wanted to get him to  
use licensed service again, we would have to make some other  
arrangement. I believe the matter was then taken up again  
across the 'phone, and we were advised that if the exhibitor  
instead of giving six months' royalty in advance, would give  
a written statement that he would remain a licensee for at  
least six months, that that would be sufficient at that time,  
to reinstate him—and such a letter was sent to them to con-  
firm the telephone conversation, and I believe we did re-  
instate the service for that exhibitor on such an arrangement. 3

Mr. CALDWELL: The question and answer is ob-  
jected to on the ground that it is obviously hearsay,  
and further, on the ground that it purports to state  
the contents of letters, and I move to strike it out.

Mr. GROSVENOR: The evidence is all introduced for  
the purpose of showing the general difficulties of con-  
ducting a business under the license agreements.

Mr. MELVILLE: I ask that the latter portion of the  
answer be stricken out on the ground that it is not  
testimony to a fact, but simply to a belief.

Mr. GROSVENOR: This letter which I will offer in 4  
evidence, states: "We will grant a new license to this  
place on condition that they furnish a written agree-  
ment to use only licensed film for a period of six  
months."

By Mr. GROSVENOR:

Q. That is the agreement to which you refer? A. Yes,  
sir.



- 1           The paper marked is Petitioner's Exhibit No. 103,  
and is as follows:

**Petitioner's Exhibit No. 103.**

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue,

New York

July 13, 1910.

- 2           Greater New York Film Rental Co.  
          116 East Fourteenth St.  
          City.

Gentlemen:

Replying to yours of July 11th, relative to the Bohemian Hall, N. Y. City.

- 3           We will grant a new license to this place on condition  
that they furnish a written agreement to use only licensed  
film for a period of six months. If this agreement is not  
furnished on or before July 18th, discontinue service and  
notify this Company.

Kindly forward the agreement to this Company.

Yours truly,

MOTION PICTURE PATENTS COMPANY

By J B

JB/CM  
X. 32

4

Mr. GROSVENOR: I also offer this letter, which you have produced, dated July 21st, 1911.

The paper is marked Petitioners Exhibit No. 104, and is as follows:

**Petitioner's Exhibit No. 104.**

1

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue,

New York

July 21st, 1911.

Greater New York Film Rental Co.,

116 E. 14th St.,

New York, N. Y.

2

Gentlemen:—

You may supply service to the Dalury & Bulabusses's Brooklyn Hall, Coney Island, provided you get from these people a written agreement that they will not hereafter exhibit any unlicensed film, or that they will not loan or sub-rent licensed film so long as they remain licensees of this Company. If you supply service please watch your reels carefully to see that no opportunity is afforded these people for sub-renting.

3

Yours truly,

MOTION PICTURE PATENTS COMPANY

By H N N

HNM/LMM

X-32

---

By Mr. GROSVENOR:

Q. That was received by you in the course of mail from the Patents Company? A. Yes, sir. 4

Mr. CALDWELL: These two letters, July 13th and July 21st, Exhibits No. 103 and 104, are objected to as incompetent, immaterial and irrelevant.

Q. This second letter, Exhibit No. 104, refers to Dalury and another, Brooklyn Hall, Coney Island. Have you something to say about that incident? A. Yes, sir. I will say

- 1 that the letter was very good advice, but somehow or other it did not help me to a great extent, because eventually this exhibitor not being able to get licensed film directly, got it indirectly from one of the exhibitors that had the supply, and one of my films was replevined there, so that I lost it. Mr. Marvin evidently knew the account very well.

Q. When the Film Service Association was in existence, did you furnish that Association with a list of your customers? A. Yes, sir.

Q. And that was the first Association which attempted to keep a list of the customers of all the different exchanges?

- 2 A. Yes, sir, it was intended as a credit association. Each exchange was to guard against bad debts, and so forth.

Q. Was there any rule prohibiting you from giving film or renting film to exhibitors that were customers of the other exchanges in the Film Service Association? A. I do not believe there was any provision so long as he did business with a licensed exchange, we were permitted to supply him, but if he had notice that he did not do all his business with a licensed exchange, we were not to supply him with any film.

Q. And by licensed exchanges, meant a member of the Film Service Association? A. Yes, sir.

- 3 Q. You have produced the following letters, being notices from the Motion Picture Patents Company of the cancellations of theatres, which I offer in evidence. You identify all of these papers as taken from your files, and being letters received by you in course of mail (indicating)? A. Yes, sir. It was the method of advising us of cancellations prior to the card system, which started about the time of the formation of the General Film Company.

- 4 Mr. GROSVENOR: I will simply read the names of the theatres and their dates into the record, if counsel agree, without putting in the letter in each case. Is that agreeable?

Mr. CALDWELL: Subject to objection.

Mr. GROSVENOR: Well, I will put in the letters.

Mr. GROSVENOR: I offer in evidence letter of December 13th, 1909, regarding Cluse Brothers, Arlington Theatre, Brooklyn, N. Y.



The paper is marked "Petitioner's Exhibit No. 105, and is as follows: 1

**Petitioner's Exhibit No. 105.**

Form 52-5M 7-09

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue,  
New York

Sept. 13, 1909. 2

Greater New York Film Rental Co.,  
116 East 14th Street,  
New York City.

Gentlemen:

You are hereby notified that we have cancelled the license of the Cluse Brothers, Arlington Theatre, Brooklyn, N. Y., on account of the exhibition of unlicensed film and on account of sub-renting.

Do not supply licensed service to the Cluse Brothers without notice from us. 3

Yours very truly,  
MOTION PICTURE PATENTS COMPANY  
By M.

HNH/JK

---

Mr. GROSVENOR: I offer in evidence, letters regarding Pearl Theatre; Oriental Theatre, Philadelphia, Pa., Sept. 23, 1909; Princess Theatre, Marshall, Michigan, Sept. 30, 1909; Darley & Smith, King Fisher, Oklahoma, Sept. 30, 1907; People's Amusement Palace, Brooklyn, N. Y., Sept. 22, 1907, Novelty Theatre, El Reno, Oklahoma, Sept. 30, 1907; Lyric Theatre, Blair, Nebraska, Sept. 30, 1909; Nicolet Theatre, Passaic, N. J., Nov. 16, 1909.

The letters are marked respectively Petitioner's Exhibits Nos. 106, 107, 108, 109, 110, 111, 112 and 113, and are as follows: 4

1

**Petitioner's Exhibit No. 106.**

September 23rd, 1909

Greater N. Y. Film Rental Co.,  
116 E. 14th St.,  
New York City.

Gentlemen:

2

You are hereby notified not to supply service to Scott & Minck for use in the Pearl Theatre, Nelsonville, Ohio, nor to F. E. Scott and E. W. Minck, or either of them, for use at Buchtel, Ohio.

Scott & Minck have been sending films from the Pearl Theatre, Nelsonville, Ohio, licensed, to Buchtel, for use in the theatre in that place, which is unlicensed.

Very truly yours,  
MOTION PICTURE PATENTS COMPANY

HNM/JMS.  
X32

By

3

---

**Petitioner's Exhibit No. 107.**

Form 52-10M 8'09

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue,

New York

4

September 23rd, 1909.

Greater N. Y. Film Rental Co.,  
116 E. 14th St.,  
New York City.

Gentlemen:

We hereby notify you that we have refused to grant a license to Mr. John B. Lindsay of the Oriental Theatre at 71st

Street & Woodland Avenue, Philadelphia, Pa., as Mr. Lindsay has been exhibiting licensed film without a license from us. 1

Do not supply licensed service to Mr. John B. Lindsay for use at the Oriental Theatre without notice from us.

Very truly yours,  
MOTION PICTURE PATENTS COMPANY  
By M.

HNM-AL.  
X32-C

2

---

**Petitioner's Exhibit No. 108.**

Form 52-10M 8-'09

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue,  
New York

September 30th, 1909. 3

Greater N. Y. Film Rental Co.,  
116 E. 14th St.,  
New York City X32

Gentlemen:

You are hereby notified that we have cancelled the license of the Princess Theatre at Marshall, Mich., Durham & Dobbins, Proprietors, on account of the exhibition of unlicensed film.

Do not supply any film for use in this theatre after receipt of this letter without notice from us. 4

We direct your attention to the following extract from our Exchange letter Form 11, dated February 10th, 1909.

"All contracts for service either to old or new customers should be made subject to the conditions that the exchange may discontinue the service upon receiving notice from the Patents Company that the li-



- 1      cense to the theatre has been withdrawn, or that a license to the theatre will not be issued, or that the application claimed by the theatre to have been sent to the Patents Company has not been received.”

Yours very truly,  
MOTION PICTURE PATENTS COMPANY  
By M

HNM/

2

---

**Petitioner's Exhibit No. 109.**

Form 52-10M 8-'09

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

September 30th, 1909.

- 3      Greater N. Y. Film Rental Co.,  
         116 E. 14th St.,  
         New York City, X32.

Gentlemen:—

You are hereby notified that we have cancelled the license of Messrs. Darley & Smith, Kingfisher, Okla., on account of the exhibition of unlicensed film.

Do not supply any film for use in this theatre after receipt of this letter without notice from us.

- 4      We direct your attention to the following extract from our Exchange letter, Form 11, dated February 10th, 1909.

“All contracts for service either to old or new customers should be made subject to the conditions that the Exchange may discontinue the service upon receiving notice from the Patents Company that the license to the theatre has been withdrawn, or that a license to the theatre will not be issued, or that the

application claimed by the theatre to have been 1  
sent to the Patents Company has not been received."

Very truly yours,  
MOTION PICTURE PATENTS COMPANY.

HNM/

By M.

---

**Petitioner's Exhibit No. 110.**

Form 52-5M 7-'09

2

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

September 22nd, 1909.

The Peoples' Amusement Palace,  
Decatur St. and Broadway,  
Brooklyn, N. Y.

3

Gentlemen:—

We hereby notify you that we have cancelled your li-  
cense on account of the exhibitions by you of unlicensed  
film.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.  
By H. N. Marvin, V.P.

HNM/AL.

4

1

**Petitioner's Exhibit No. 111.**

Form 52-10M 8-'09

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

September 30th, 1909.

Greater N. Y. Film Rental Co.,

2

116 E. 14th St.,

New York City, X32.

Gentlemen:—

You are hereby notified that we have cancelled the license of the Novelty Theatre at El Reno, Okla., D. L. Walker, proprietor, on account of the exhibition of unlicensed film.

Do not supply any film for use in this theatre after receipt of this letter without notice from us.

3

We direct your attention to the following extract from our Exchange letter, Form 11, dated February 10th, 1909.

"All contracts for service either to old or new customers should be made subject to the conditions that the exchange may discontinue the service upon receiving notice from the Patents Company that the license to the theatre has been withdrawn, or that a license to the theatre will not be issued, or that the application claimed by the theatre to have been sent to the Patents Company has not been received."

4

Very truly yours,

MOTION PICTURE PATENTS COMPANY.

HNH/

By M.



**Petitioner's Exhibit No. 112.**

1

Form 52-10M 8-'09

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

September 30th, 1909.

Greater N. Y. Film Rental Co.,

116 E. 14th St.,

New York City, X32.

2

Gentlemen:—

You are hereby notified that we have cancelled the license of the Lyric Theatre at Blair, Neb., State Amusement Company, proprietors, on account of the exhibition of unlicensed film.

Do not supply any film for use in this theatre after receipt of this letter without notice from us.

We direct your attention to the following extract from our Exchange letter, Form 11, dated February 10th, 1909.

3

"All contracts for service either to old or new customers should be made subject to the conditions that the exchange may discontinue the service upon receiving notice from the Patents Company that the license to the theatre has been withdrawn, or that a license to the theatre will not be issued, or that the application claimed by the theatre to have been sent to the Patents Company had not been received."

4

Very truly yours,

MOTION PICTURE PATENTS COMPANY.

HNM/

By M.

1

**Petitioner's Exhibit No. 113.**

Form 52-5M. 10-'09.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City

November 16, 1909.

Greater New York Film Rental Company,

2

116 East 14th Street,

New York City.

Gentlemen:—

We hereby notify you that the license of the Nicolet Theatre, Mr. S. Staff, proprietor, 187 Passaic Avenue, Passaic, N. J., has been cancelled on account of exhibition by him of unlicensed film.

Do not serve this exhibitor without notice from us.

3

Yours truly,

**MOTION PICTURE PATENTS COMPANY.**

JB/EP

By J. B.

X-32

By Mr. GROSVENOR:

4

Q. I show you three letters, dated November 18th, 26th and 26th, 1909, from the Patents Company, relating to the issuing of licenses to new theatres, or proposed theatres, and stating that there are one or more other licensed exhibitors in the vicinity of the proposed new exhibitors. Have you from time to time received such letters from the Patents Company before the granting of licenses? A. Yes, sir.

Mr. GROSVENOR: I offer those in evidence.

The papers are received in evidence and marked respectively "Petitioner's Exhibits No. 114, No. 115, and No. 116," and are as follows:

**Petitioner's Exhibit No. 114.**

1

Form 52-5M 10-'09

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City.

November 26, 1909.

Greater N. Y. Film Rental Co.,

116 East 14th Street,

New York City.

2

Gentlemen:

We have received an application for a license for

Tulane Airdome,

11295

Tulane Ave.,

New Orleans, La.

Freidenberg &amp; Huer.

7

3

Our records show that there is at present one Licensed Exhibitor in the vicinity of the applicant who is being served by you.

Please give us your opinion of the advisability of licensing the above Exhibitor.

Yours very truly,

**MOTION PICTURE PATENTS COMPANY,**

By G E J

GEJ/MQ

X-32

4



1

**Petitioner's Exhibit No. 115.**

Form 52-5M 10-09

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City.

November 18, 1909.

Greater New York Film Rental Co.,

2 116 East 14th Street,  
New York City.

Gentlemen:

We have received through you an application for a  
license for

Berkand Theatre, 10117  
25 Appleton St.,  
Lawrence, Mass.  
Kent & Amyotte.

3

Our records show that there are at present three Li-  
censed Exhibitors in vicinity of applicant, from one of  
whom we have received a protest against licensing an addi-  
tional theatre.

Please give us your opinion of the advisability of licens-  
ing the above Exhibitor.

Yours very truly,

MOTION PICTURE PATENTS COMPANY,

By G E J

4 GEJ/MQ  
X-32

**Petitioner's Exhibit No. 116.**

1

Form 52-5M 10-'09

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City.

November 26, 1909.

Greater N. Y. Film Rental Co.,  
116 East 14th Street,  
New York City.

2

Gentlemen:

We have received an application for a license for

Houston Hippodrome,  
41 Houston St.,  
New York City.  
Steiner & Markowitz.

11293

3

Our records show that there are at present three Licensed Exhibitors in the vicinity of the applicant, one of them being served by you and from one of whom we have received a protest against licensing an additional theatre.

Please give us your opinion of the advisability of licensing the above Exhibitor.

Yours very truly,

**MOTION PICTURE PATENTS COMPANY,**

By G E J

GEJ/MQ  
X-32

4

---

By Mr. GROSVENOR:

Q. Has a card been adopted now as a substitute for that sort of a letter? A. Yes, sir. They have not been used in the past few months at all.

Mr. GROSVENOR: I introduce another letter of

1 the same character, dated December 29th, 1909, also one dated January 27th, 1910.

The papers are marked, respectively, "Petitioner's Exhibit 117, and Petitioner's Exhibit No. 118," and are as follows:

**Petitioner's Exhibit No. 117.**

Form 52-5M 11-'09

2 MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City.

December 29, 1909.

Greater N. Y. Film Rental Co.,  
116 East 14th Street,  
New York City.

Gentlemen:

3 We have received an application for a license for

Bijou Theatre, 11918  
Wall St.,  
Huntington, L. I.  
Martin Mayer Co.

Our records show that the population of this town is about 3028, and that there is at present one Licensed Exhibitor in said town who is being served by you.

4 Please give us your opinion of the advisability of licensing the above Exhibitor.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,

By G E J

GEJ/MQ  
X-32



**Petitioner's Exhibit No. 118.**

1

Form 52-10M 1-'10

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue

New York City.

January 27th, 1910.

Greater N. Y. Film Rental Co.,  
116 East 14th Street,  
New York City.

2

Gentlemen:

We have received applications for a license for

Longwood Theatre, 12308  
866 Longwood Ave.,  
New York City.  
Mr. Hanson.

3

Our records show that the population of this city is about 4113043, and that there are at present 161 Licensed Exhibitors in said city.

As we have received 5 protests against licensing additional theatres in various parts of the city, we request that you investigate conditions in the vicinity of the above named applicant and give us your opinion of the advisability of licensing the above Exhibitor.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY,  
By G E J

4

GEJ/MQ  
X-32

---

By Mr. GROSVENOR:

Q. Are you required under the terms of the license agreements, to send in to the Patents Company, a state-

- 1 ment showing the number of reels furnished to each of your customers weekly, or any statement of the amount of business done by you with your different customers?  
A. I don't remember that that has ever been carried out. We give them a list of the number of customers that we supply. Names and addresses.

Mr. GROSVENOR: I offer this letter in evidence (indicating).

The paper is marked "Petitioner's Exhibit No. 119," and is as follows:

2

**Petitioner's Exhibit No. 119.**

Form 52-10M. 1-10.

**MOTION PICTURE PATENTS COMPANY**

80 Fifth Avenue,

New York City

February 14, 1910.

- 3 Greater N. Y. Film Rental Co.,  
116 E. 14th St.,  
New York City X32

Gentlemen:

Unlicensed film was exhibited in the American Music Hall, New York, on Friday, February 11th. You are hereby notified not to supply licensed service for use in any of the following theatres without notice from us.

Orpheum Theatre, 4109, Boston Mass. Wm. Morris.

Colonial Theatre, 11428, S. W. Cor. Illinois & N. Y. Sts.,

- 4 Indianapolis, Ind. Wm. Morris, Inc.

American Music Hall, 4116, 8th Ave. & 42nd St., N. Y. City. Wm. Morris, Inc.

Am. Music Hall, 2792, Peck Court & Wabash Ave., Chicago, Ill. Wm. Morris Co.

Plaza Music Hall, 6123, 59th St. & Madison Ave., N. Y. City. Wm. Morris Co.

Lyric Theatre, 4130, 211 Market St., Newark, N. J. Wm. Morris Co.

American Music Hall, 9623, Iberville & Dauphine Sts., 1  
New Orleans, La. American Music Hall Co.

Very truly yours,  
MOTION PICTURE PATENTS COMPANY  
By H. N. M.

HNM-KVB.

---

Mr. GROSVENOR: I also offer in evidence this  
letter (indicating).

The paper is marked "Petitioner's Exhibit No. 2  
120," and is as follows:

**Petitioner's Exhibit No. 120.**

Form 52-10M. 2-10.

MOTION PICTURE PATENTS COMPANY

80 Fifth Avenue

New York City

3

March 15, 1910.

Greater N. Y. Film Rental Co.,  
116 East 14th Street,  
New York City.

Gentlemen:

We have received an application for a license for

13315

4

233 Monticello Ave.,

Jersey City, N. J.

Mr. Wm. Reeside.

Our records show that the population of this city is about 237952, and that there are at present 15 Licensed Exhibitors in said city, one of them being served by you, and from one of whom we have received a protest against licensing an additional theatre.



- 1      Please give us your opinion of the advisability of licensing the above Exhibitor.

Yours very truly,  
MOTION PICTURE PATENTS COMPANY.  
By G. E. J.

GEJ/MQ  
X32

- 2      By Mr. GROSVENOR:

Q. You have also produced a lot of letters in a cover entitled "Advertising matter and correspondence in regard to special features." I show you a letter dated October 18th, 1912, addressed to you, and signed by the Erba-graph Company. Will you please read that and state what you are able to about that incident?

- 3      Mr. CALDWELL: That document is objected to on the ground it is correspondence between the witness and a third party, and is not binding upon any of the defendants in this case.

Mr. GROSVENOR: I will not mark that letter.

By Mr. GROSVENOR:

Q. Please answer the question—what you remember about it? A. I had been unable to satisfy this party—

Q. (Interrupting): Just name the party? A. The Comet Theatre, Miss Emma Erb, Manager.

- 4      Mr. WILLIS: I object to the witness looking at the document, unless it is offered in evidence. It is not a memorandum in his handwriting.

The Witness: Upon request by Miss Erb for the supply of specials, I informed her that we did not have those subjects advertised "exclusively supplied by the General Film Company," but I would make an effort to get it from one of the other exchanges—which I did, and found that I could not get any. The excuse was there were not any available. I then told her to go over to any office of the Gen-

eral Film Company, and see whether she could not make her own arrangements. She tried that, and came back and said it was impossible to do that unless she made complete arrangements for complete service. I then told her to do that, and she went back again, and made arrangements for complete service, and immediately was booked for all these subjects that she could not get formerly—she got them without any trouble, and she did commence her service with the General Film Company at the end of that week, and stayed there for several months, until she used up the specials, and is now back again with the Greater New York Film Company, where she chooses to do her business in preference to the General Film Company. 1 2

Mr. CALDWELL: That question and answer I object to as incompetent, immaterial and irrelevant.

Mr. GROSVENOR: Here is a letterhead of the General Film Company, dated November 13th, 1912, addressed to Messrs. Norton & Gentile, New Haven, and I offer it in evidence.

Mr. CALDWELL: The letter is objected to as incompetent, immaterial and irrelevant. 3

The paper is marked Petitioner's Exhibit No. 121, and is as follows:

### **Petitioner's Exhibit No. 121.**

GENERAL FILM CO.

107 E. 17th Street

New York

Films for Rent

Moving Picture

Machines

and Supplies.

Licensed by

Motion

Picture

Patents Co. 4

Nov. 13, 1912.

Mess. Norton & Gentile,  
791 Chapel St.,  
New Haven, Conn.

Gentlemen:

Yours of the 11th inst. received and regret to note that

1 you have decided to discontinue our service. We are surprised to find that you are going to an exchange where they do not have the various Specials which every up-to-date manager realizes must be shown in order to hold his patrons. Your action will, of course compel us to fully protect our other customers in the way of Specials and age of reels, and we assure you that we will do so.

Yours very truly,

GENERAL FILM CO.

2 RE/RV

Per R. Etris  
Branch Manager.

---

By Mr. GROSVENOR:

Q. This letter of the General Film Company, written to Norton & Gentile, states: "We are surprised to find that you are going to an exchange where they do not have the various 'Specials' which every up-to-date manager realizes must be shown in order to hold his patrons." Are these  
3 the "Specials" in respect to which you testified yesterday?  
A. Yes, sir.

Q. And did this exhibitor, Norton & Gentile, come to take your service? A. Yes, sir.

Q. Here is a letter of the Kalem Company dated June 24th, 1912, referring to the "Tragedy of the Desert," and stating that that was disposed of to the General Film Company. Was that another "special" which your company was unable to obtain? A. Yes, sir; we had several telephone conversations asking for the supply of those  
4 "specials," but we could not get them under any circumstances.

Mr. GROSVENOR: I offer that letter in evidence.

The letter is marked Petitioner's Exhibit No. 122, and is as follows:



**Petitioner's Exhibit No. 122.**

1

KALEM COMPANY

Incorporated

(Cut)

KALEM

Manufacturers of  
Moving Picture Films  
235-239 West 23rd Street  
Eastman Kodak Building

2

Foreign Agencies  
London—86 Wardour St.  
Berlin—35 Friedrichs Str.  
Paris—13 Rue du Faubourg  
Montmorte

Western Union Code  
Cable Address, KALEM  
Telephone, 223 Chelsea

New York, June 24th, 1912.

Mr. L. Rosenbluh,  
Greater New York Film Rental Co.,  
116 East 14th St.,  
New York City.

3

Dear Sir:

We have your esteemed favor of June 21st and beg to advise that our special release of July 1st, 1912, entitled "Tragedy of the Desert" has been disposed of to the General Film Company.

Very truly yours,

KALEM COMPANY,

By J. F. W—

[Signature Illegible.]

Secy.

4

1 By Mr. GROSVENOR:

Q. That letter refers to the advertisement, Exhibit No. 93, printed at page 375 of the record? A. Yes, sir.

Q. There is a telegram here from the Selig Polyscope Company, dated April 29th, 1912, addressed to the Greater New York Film Company, and referring to a negative of "The Coming of Columbus." Was that another "special"?

2 A. That was one of the first of the so-called "specials" exclusively controlled by the General Film Company. Therefore, Selig had supplied us with other pictures of a similar nature, such as "Cinderella," which was also in three reels and one subject, in the ordinary course of supply.

Q. This telegram reads: "The General Film Company purchased and control entirely the negative of the 'Coming of Columbus,' and all positive prints therefrom." I think yesterday you referred to this incident in your testimony. Is that right? A. No, I mentioned the "Landing of Roosevelt."

Q. And who was it that produced "The Landing of Roosevelt?" A. Pathe.

3 Q. There was another "special" you were unable to obtain? A. That one I did get, but this one, "The Landing of Columbus" I did not get.

Mr. GROSVENOR: I offer the telegram in evidence.

The paper is marked Petitioner's Exhibit No. 123, and is as follows:

### **Petitioner's Exhibit No. 123.**

Form 260

#### **THE WESTERN UNION TELEGRAPH COMPANY**

4

Incorporated

25,000 Offices in America      Cable Service to all the World  
Theo. N. Vail, President

Belvidere Brooks, General Manager

Chicago, Ill. Apr. 29th/12.

Greater New York Film Rental Co.

116 E. 14th St., New York

The general film company purchased and control entirely

the negative of the coming of Columbus and all positive prints therefrom. 1

The Selig Polyscope Co.  
929p

---

At this point an adjournment was taken until 2.30 P. M., same place.

---

New York City, January 23rd, 1913. 2

The hearing was resumed at 2.30 o'clock P. M., on this January 23rd, 1913, at the Hotel McAlpin, pursuant to adjournment.

The appearances being the same as at the morning session.

Thereupon LOUIS ROSENBLUH resumed the stand.

Direct examination (continued) by Mr. GROSVENOR: 3

Q. Mr. Rosenbluh, you have produced certain printed pink cards issued by the Motion Picture Patents Company, each of them with the name of a theatre on it. Are these different kinds of cards that you received from the Patents Company? A. Yes, sir.

Q. There are also certain blue cards printed and issued by the Motion Picture Patents Company. Are those also cards you received from the Patents Company? A. Yes, sir.

Q. Is the pink color used where there is a cancellation and the blue color where there is a renewal? A. Yes, sir. 4

Q. These four pink cards which I show you, are these different forms that you have received at different times, or does one succeed the other, so that there is only one in use at any one special time? A. Only one in use at any special time.

Q. That is, they are different forms that have been adopted by the Patents Company from time to time? A. No, I should imagine that they are for certain different conditions, they used a different card for each condition



1 according to the information that necessitated cancellation.

Mr. GROSVENOR: I now offer in evidence three of these pink cards and ask that they be properly marked.

2 The cards referred to are marked as follows: The one addressed to "Log Cabin Open Air," is marked Petitioner's Exhibit 124; the one addressed to "Palace Theatre," is marked Petitioner's Exhibit No. 125, and the one addressed to "Irving Theatre," is marked  
3 Petitioner's Exhibit 126, and in the order stated are as follows:

### **Petitioner's Exhibit No. 124.**

#### **NOTICE TO SUSPEND SERVICE.**

Log Cabin Open Air, 6868  
803-805 Ocean Ave.,  
Jersey City, N. J.  
3 J. McCarthy Sus. 6, 9, 11.

#### **To Exchanges:**

Evidence in our possession indicates that the above mentioned theatre has loaned or sub-rented licensed film. Do not supply film for use in this theatre without notice from us.

#### **MOTION PICTURE PATENTS COMPANY**

New York, N. Y.

4 June 9, 1911.

Second Notice  
Form 255—3M—3—10.

(Back)

**GREATER N. Y. FILM RENTAL CO.,**

116 E. 14th St.,

New York City X32.

**Petitioner's Exhibit No. 125.**

1

## NOTICE TO SUSPEND SERVICE.

Palace Theatre, 19259  
40 Speedwell Ave.,  
Morristown, N. J.  
Antonio Esposito

## To Exchanges:

The license of the above theatre has been cancelled for  
exhibiting unlicensed film. Do not supply service for use 2  
in this theatre without notice from us.

## MOTION PICTURE PATENTS COMPANY

New York, N. Y.

April 6, 1911

Form 253 5M 6 10.

(Back)

Mailed  
C. L.

## GREATER N. Y. FILM RENTAL CO.,

3

116 E. 14th St.,

New York City X32.

**Petitioner's Exhibit No. 126.**

## NOTICE TO SUSPEND SERVICE.

Irving Theatre, 18091  
1016 Fulton St.,  
Brooklyn, N. Y.

4

C. Goldman.

## To Exchanges:

The license of the above theatre has been cancelled for  
exhibiting unlicensed film. Do not supply service for use  
in this theatre without notice from us.

1

## MOTION PICTURE PATENTS COMPANY

New York, N. Y.

Sep. 14, 1911

Form 253 5M 2—11

(Back)

GREATER N. Y. FILM RENTAL CO.,

116 E. 14th St.,

New York City X32.

2

By Mr. GROSVENOR:

Q. What different rules have been in force by the Patents Company relating to the return of film since the company commenced business in 1909? A. At first it was directed, or, at least, we were directed to return ninety per cent. of the amount purchased or leased of any make or age: it was then changed because it was found that ninety per cent. was more of the film than could really be returned, and then it was limited to eighty per cent.

3

Q. Was some of it impaired and destroyed in the course of use? A. Yes, sir.

Q. Do the exchanges make over the film or repair the film, do they have workmen for that purpose? A. Yes, they have splicing clerks.

4

Q. Go on, please. A. And at a later date, sometime in 1911, it was changed in that each manufacturer required his own make to be returned, and then there was an additional change at the end of 1912, which required the name of the subject that was returned and it should be only the make of each manufacturer to whom it was returned.

Q. By this means the manufacturer was advised at all times of what reels you had on hand, and what you returned? A. Yes, sir.

Q. Do you know a man by the name of Braden up at the offices of the Patents Company; have you had dealings with such a man? A. He is the man we had most of our conversations with over the telephone and the man to whom we directed exhibitors to take up any of their mat-



ters that they wished to take up with regard to licenses and so forth, which we understood that Mr. Braden handled, exclusively, all complaints of this kind. 1

Q. Regarding cancellation of licenses? A. Yes, sir.

Q. Of exhibitors? A. Yes, sir.

Q. And the renewal of liceses? A. Yes, sir; and anything that he could not quite decide himself, or did not choose to decide, he always stated that he would take that matter up with Mr. Marvin.

Q. Who is Mr. Durant Church? Do you know anybody by that name up there? A. I have met Mr. Durant Church, and my understanding is that he is a representative of the manufacturers who goes out with the writs of replevin and makes all seizures for the various manufacturers of film that belong to the various manufacturers, for any reason whatever. 2

Q. Is he located at the Patents offices? A. I understand he is; he is there to be found.

Mr. CALDWELL: I move to strike out the last two answers as stating the understanding of the witness. 3

Q. Have you met him? A. Yes, sir.

Q. Up at the offices of the Patents Company? A. Yes, sir.

The witness, Louis Rosenbluh was excused until 10.30 o'clock A. M., January 24, 1913.

Thereupon WILLIAM H. SWANSON resumed the stand. 4

Direct examination (continued) by Mr. GROSVENOR:

By Mr. GROSVENOR:

Q. In 1909 where was the business center of the motion picture business, in Chicago or New York? A. Chicago was a much larger field than New York at that time.

1 Q. Were you familiar with the names and the persons engaged in the rental business and in the manufacturing business in the motion picture art in the year 1909? A. Throughout the country?

Q. Yes, generally? A. I had a personal acquaintance with nearly everybody in the business, yes, sir.

2 Q. Now, state whether or not the exchanges and the exchange men, basing your answer on the information you obtained from the meetings you have testified you attended, state whether or not those rental exchange men were in favor of collecting the two dollars a week themselves for the Patents Company, or having the Patents Company do that collecting? A. They were vehement in their demand that the Patents Company do their own collecting.

3 Q. Did you know of any of them at any time asking that they be allowed to do the work of collecting for the Patents Company? A. I never heard any such request as that. It was generally understood among the exchange men, and it was feared at that time, that if exchanges started to do the collecting of this royalty, the competition in the business being very keen, that it would only be a matter of a very short time until various competitors would be offering to pay the royalty for the exhibitor.

MR. CALDWELL: The question and answer are objected to on the ground that it is hearsay.

Q. State whether or not all the rental exchanges doing business in Chicago, in the year 1909, were licensed by the Patents Company? A. They were not.

Q. Who were not that you recollect? A. That were not licensed?

4 Q. Yes, that were not licensed? A. The Chicago Film Exchange, the Royal Film Exchange, the Globe Film Exchange, and I am under the impression that the Shiller Film Exchange was not licensed.

Q. Did any of those exchanges go out of business— A. (Interrupting): They all went out of business.

Q. (Continuing): Shortly thereafter? A. They have

all since went out of business. Others have gone out of business that had their licenses cancelled, as well, since then. 1

Q. Do you know a man named Durant Church? A. I have seen him, met him, yes, sir.

Q. Did you ever at any time have any dealings with him in connection with any of the provisions of the license agreement adopted by the Patents Company? A. Yes, I did.

Q. Please state when, and where, and the conversation, to the best of your recollection.

Mr. CALDWELL: The question is objected to as calling for a conversation with a third person not authorized to bind these defendants. 2

Q. Confine yourself to these matters which I have asked you about, namely, the license agreement? A. Yes. Either in the latter part of January, or the beginning of February, 1909, I received a telephone call from a gentleman saying that his name was Mr. Church.

Q. And where was it? A. This was in Chicago—who purported to be telephoning from the Sherman House. He said his name was Mr. Church, and that he was representing the Patents Company, and that he came to Chicago for the purpose of demanding a list of names of customers who were being furnished by the various exchanges licensed film, and demanded that I fill out that list and bring it over to him at the hotel. I told him that I was very busy; that it was not but a block and a half from the hotel to my office, and if he wanted the list to come over and get it; otherwise, I would not have time to take it over to him. He did not come over at that time, but the following evening I met Mr. Spoor at the hotel, and he commented on the fact that I had this conversation with Mr. Church and requested me to go up there and receive an introduction in the hotel, which I did. Mr. Church then went with me over to my office, and we had a conversation there relative to what he wanted; and I stated that inasmuch as I had not received a license from the Patents Company, that I did not think I was obligated to give 3 4



1 him any list which was considered of value to an exchange, and he then pulled his coat off, and rolled up his sleeves, and said that he was a fresh college graduate and a football player, and gave me an illustration of his muscular development, of his arms, and stated that there was nobody any larger in the business than the Patents Company, and that if they had any degree of size that they would be the first to be knocked on the head, and he said he had a damned good idea that I would be the first fellow knocked on the head, and with that I ordered him out of the office.

2 I met him at the College Inn, the following night, in the presence of Mr. George Kleine. I told him I thought he was a very energetic and a hustling young man, and if he would come and work for me I would give him a salary of \$25,000 a year, and he asked Mr. Kleine if he thought I would fulfill that sort of an agreement, and Mr. Kleine said he thought I would, and he left me with the understanding that he was to think the matter over, and that is the last I have seen of Mr. Church.

3 Q. Mr. Swanson, you went out, I understand, of the rental exchange business in Chicago, after your trouble with the Patents Company? A. Not alone in Chicago, but in St. Louis, Omaha, Kansas City and New Orleans as well.

Q. And then did you go to Denver? A. Yes, sir.

Q. And establish a rental exchange there? A. Yes, sir.

Q. Have you been engaged in the manufacture of film within the last few years? A. Yes, sir.

4 Q. And what was the name of your company? A. The first company I established was a partnership known as the Defender Company; that was in existence for a few months, and they incorporated, and it was known as the Rex Motion Picture Manufacturing Company. That company was recently sold to the Universal Film Manufacturing Company.

Q. Are you an officer of the Universal Film Manufacturing Company? A. The Secretary.

Q. Secretary of that company? A. Yes, sir.

Q. You are one of the stockholders of the company? A. Yes, sir.

Cross examination by Mr. WILLIS:

1

Q. Mr. Swanson, have you read your testimony as far as it has been printed, in fact, up to that which has been taken this afternoon? A. No, sir, I have read a portion of the testimony that I gave day before yesterday.

Q. You recollect your testimony, however, do you not? A. Very distinctly.

Q. Have you any corrections to make in it? A. There were a few typographical errors that should have been corrected.

Q. The typographical errors did not change the sense, or meaning of your testimony, did they? A. Well, not such of it as I saw, I don't think it would except I have not read it all, not even my first day's testimony.

2

Q. Now, Mr. Swanson, permit me to ask you what your occupation or business was prior to entering the moving picture business in 1896? A. In a general way I was in the show business all my life.

Q. What sort of a show business? A. I have been in the circus business, and in the carnival business, and bicycle riding business, and theatrical business.

Q. Can you fix the date of the meeting which you say took place in January, 1909, in the City of New York? A. The 11th of January.

3

Q. That meeting was at the Imperial Hotel? A. It was on the first floor of the Imperial Hotel.

Q. And that meeting consisted of representatives of the rental exchanges, did it not? A. Not altogether so; it was a meeting of the Film Service Association, which consisted of film exchanges, machine manufacturers, and film manufacturers.

Q. I understood you to say there was presented at that meeting a contract or license form which the representatives at the meeting were notified to sign and concur in with the Motion Picture Patents Company? A. The forms were presented, but they were not invited to sign them at that particular time and place. They were to be taken back to the various homes, and considered and signed, and returned within a given period of time.

4

Q. Had you known anything about that plan before? A. Three days before that meeting I was given a typewritten copy of the contract by a certain friend of mine.

1 Q. Who was he? A. Mr. Baird.

Q. Who is he and what does he do, what is he an officer of? A. Mr. Baird is, or was, as I remember, in the manufacturing of repair parts for machines, in fact, I guess he has built complete machines for some concern. He terms his business "machinery business."

Q. Were you an officer of the Film Service Association in 1908? A. Yes, I was a director and an executive committeeman.

Q. Did that company issue bulletins? A. I was also chairman—yes, I was an officer in 1908.

2 Q. Chairman of the Executive Committee? A. Temporary chairman of the organization for several months.

Q. You were a member of the Executive Committee? A. Yes, sir.

Q. Were you the chairman of the Executive Committee? A. No, sir.

Q. Who was? A. The President of the association, Mr. James Clark.

Q. Then when you were acting temporary chairman of the association you were *ex officio* chairman of the Executive Committee? A. Yes, sir, during that period I was.

3 Q. Now, would that association issue bulletins of information to the various exchanges? A. It did, yes, sir.

Q. And what part did you take in the preparation of those bulletins, if any? A. The Executive Committee, as it was termed, which was nothing more or less than the Board of Directors, of course, would meet from time to time in the City of New York, and pass resolutions, and the bulletins were then gotten out and written solely under the supervision of the Secretary, Mr. MacDonald, from the extracts of those minutes.

4 Q. Would your name appear upon any of those bulletins? A. It might in a printed form, perhaps.

Q. But don't you know whether it did or not appear in any form? A. I can't recall.

Q. Whether printed or whether it was not? A. I would judge, however, that it would not.

Q. You were a member of the Executive Committee, and for a time President of the association and *ex officio* President of the Executive Committee, and you want to tell us now that you don't know whether you signed any of those bulletins or not? A. I didn't say I didn't know; you asked



me—well, I won't controvert the matter with you—I didn't sign any of the bulletins. 1

Q. Of course the bulletins were printed and signed with the names, were they not? A. Exactly.

Q. And of course your name would appear there in print, if your name would appear at all? A. I presume it would.

Q. Now, do you mean to say that they were signed with your approval? A. That was taken for granted, I was fully in accord with it.

Q. Do you know whether or not any bulletins were sent out to the various exchanges prior to this meeting which you say was on the 11th of January, 1909, informing the exchange membership of the proposed licenses, or change in the old license agreement, that such information appeared in bulletins over your name? Do you know that fact or not? A. I do not recall the fact if it occurred, although I won't say that it did not. However, I would state that I have no knowledge of ever seeing a bulletin of any character—I have no recollection of ever seeing a bulletin with my name on it, is what I mean to say. They were usually signed "Dwight MacDonald, Secretary Film Service Association." 2

Mr. GROSVENOR: I put a number of those bulletins in evidence this morning in connection with the testimony of Mr. Rosenbluh. I put quite a number of the bulletins of the Film Service Association in evidence during the testimony of Mr. Rosenbluh. 3

Mr. WILLIS: Yes, that may be quite true, but these bulletins were issued by an association of which he was Chairman a part of the time, and a part of the time, but not all of the time, a member of the Executive Committee:

By Mr. WILLIS: 4

Q. Do you remember of receiving a bulletin prior to this meeting of January, 1909? A. I don't remember.

Q. With such information as I have described, whether over your name or otherwise? A. I don't remember the exact bulletin describing that circumstance, but I am perfectly satisfied in my mind that there was a bulletin of some character distributed among the exchanges notifying them that this meeting was to occur, but as to whether

1 that bulletin contained information that there was to be any changes in contracts or not, I don't recall.

Q. Mr. Swanson, you have gone into the subject of what took place at these various meetings at which you were present, and you have gone into the discussion as to what one man said, and what another said in detail—your recollection seems to be quite vivid on that—is it more so than it is upon the information I am now seeking with reference to the bulletin? A. To my mind it is very logical that anyone's recollection of a conversation between men would be much more distinct than would be the mere reading of something, particularly so, if the reading matter would be of frequent occurrence.

2 Q. Is that the only answer you have to make to my question? A. That would be all, yes, sir.

Q. Well, after this meeting took place in January, 1909, at the Imperial Hotel, you went back home to Chicago, did you? A. Yes, sir.

Q. You were not pleased with the suggestions contained in the new proposed license agreement? A. I was not, no, sir.

3 Q. You subsequently, however, signed that new license agreement? A. I did.

Q. With the Motion Picture Patents Company? A. I did.

Q. What effect did that have on your business? A. What, the signing of it?

Q. Yes. A. None whatever, business went along in its usual way, no more than if I had signed a receipt for rent, and so on.

Q. You afterwards got out, or surrendered your license agreement, did you, or was it revoked? A. I didn't have any license agreement, except I signed it, and they had not.

4 Q. It seems to me, Mr. Swanson, that you are begging the question. You signed it and returned it to them in duplicate, as I understood you? A. Yes, sir.

Q. And they continued to furnish you with film under the provisions of it? A. Yes, sir.

Q. And you paid them for it? A. Yes, sir; I did.

Q. So that all that was required to be done under the license agreement was done notwithstanding it was not returned to you, isn't that the fact? A. It is very true, and

it is very likely that it was a legal contract for that reason. 1

Q. Well, now, did you surrender your license, or was it revoked? A. It was revoked.

Q. What effect did that have on your business? A. Within forty-eight hours after it was revoked, my business dropped off \$2,000 per week. I might correct that if you will permit it, sir—

Q. Correct anything you want to, sir. A. I was notified by men with whom I was dealing to the extent of \$2,000 per week that at the expiration of my securing film from the Patents Company they would discontinue doing business with me; subsequently I lost the business entirely. It dwindled out to nothing. 2

Q. Did you have an interview in The Moving Picture World, of the issue of April 10, 1909, with reference to the effect that the Motion Picture Patents Company was having upon Independents? A. I do not recall.

Q. And what effect it was having upon your business? A. I don't recall any such interview—there might have been.

Q. It is represented in the issue referred to that you were asked, "What is new in the situation?" Do you remember what your reply was? A. No, I have no recollection of what the interview was at all. At that time I had interviews with various newspaper men nearly every day for a number of months. 3

Q. Yes, I didn't expect you to remember the exact language that was used, but I do think you might remember the subject matter embodied in the interview. A. Well, it would not be likely that I would remember that for the reason that any interviews given to newspapers was done solely, as the small boy whistles in the dark to keep up his own courage, more or less, more or less hot air. 4

Q. And is that the way with a great deal of your testimony? A. At that particular time regarding the film situation and the Patents Company troubles, I was having.

Q. Since when have you reached a change of mind and heart? A. I have not had any change of mind and heart, if you refer to the answer I have just given you as regards the situation.

Q. I am referring to your own language, Mr. Swanson, the "hot air" that you have been alluding to? A. Well, as



1 a matter of fact, anything that any man may have said at that particular time, and for a number of months afterwards regarding his own condition, or the condition of the trade in general insofar as independents were concerned, could necessarily have not been anything but hot air, for the reason that there was not any particular foundation for an independent.

Q. Well, that is usually true with you people, isn't it, when you are fighting— A. It has been customary, I guess, among film exchange interests at all times—

2 Q. Your own position is magnified— A. (Interrupting): And the opposition belittled.

Q. (Continuing): And the other side— A. (Interrupting): The opposition belittled.

Q. That is the usual practice in all such litigations? A. You being a lawyer, I imagine you know more than I would in regard to that.

Q. No, I try cases, I don't do anything else. I am talking about you now? A. Well, if you ask me, I don't know, except my own personal information in the matter.

3 Q. Now, Mr. Swanson, were projecting machines sold by you prior to 1909? A. Yes, sir; in large quantities.

Q. Now, I believe you have testified, referring to projecting machines, that you sold several hundred prior to 1909. Are you familiar with the construction of those machines? A. Yes, sir; thoroughly so.

Q. Did they have some kind of an intermittent device which engaged the film and pulled it past the exposure opening step by step or intermittently? A. They did, every one.

4 Q. Did they have a support on top of the machine for a reel of film being exposed? A. Not at all times in all the years prior to 1909, they did not.

Q. Did they have some kind of a support for the reel? A. Yes, sir.

Q. And what was it? A. Sometimes a piece of wire, and at other times a casting, an iron casting, of course.

Q. And what kind of an arrangement did they have to turn the film from the reel? A. In the early machines they had no—

Q. (Interrupting): I am talking about those that you sold? A. I am referring to that also, sir. In the early days there was an expanded spring with a revolving rubber

roller that by its springing action sort of flipped the film off the reel. Later on there was an upper sprocket driven by the mechanism of the machine, to pull the film down over the reel.

Q. Were any of those machines having the spring in use in 1909? A. Yes, sir.

Q. Where? A. Where were they in use?

Q. Yes. A. I don't know where they were in use, the particular places, but hundreds and thousands of them were sold.

Q. What proportion of them that were in use in 1909, had the spring arrangement you refer to? A. Well, I could not answer as to what proportion were in use; that would be out of the question, because I didn't manufacture the machine.

Q. Do you know whether any of them were in use, of your own knowledge? A. Yes.

Q. Where? A. One that I know of in White's Amusement, on State Street, Chicago, and had been for six or seven years.

Q. But don't you know that by far the greater number of them had the sprocket? A. I don't know it, but I would reasonably think so.

Q. Are any of those with the spring arrangement in use to-day? A. That I am unable to answer. I very seldom go around where projecting machines are used.

Q. Well, you don't know? A. I don't know.

Q. How was this sprocket wheel of which you have spoken, driven? A. Some were driven by a combination of gears in mesh with each other, some were driven by longitudinal shafts with mitre gears, and others were driven by an endless chain in connection with the gears.

Q. It matters not how they were driven—didn't they turn at a continuous speed when the handle was turned? A. They did, yes, sir; at a uniform speed.

Q. Did this sprocket wheel engage the film after the film passed over the reel, and before reaching the exposure opening? A. It did.

Q. Did any of these machines have any patent plates on them? A. Prior to 1909?

Q. Yes. A. Yes, I would say they did; I presume they did, some of them.

1      Q. What was the wording on the plate? A. I cannot recall that.

Mr. GROSVENOR: Which machine are you referring to?

Mr. WILLIS: I am referring to those that he sold prior to 1908.

Mr. GROSVENOR: Yes, but on direct examination he testified that he had sold a number of makes.

Mr. WILLIS: I am coming to that in a moment.

2      Mr. GROSVENOR: I thought it would make it clear in my own mind if you specify the make.

Mr. WILLIS: I will get to that, Mr. Grosvenor.

By Mr. WILLIS:

Q. You have testified that these machines were sold without any restrictions at all. You didn't pay any attention to what was on the plate, did you? A. Certainly, I did.

Q. How? A. Certainly we did, certainly I did.

3      Q. What was on the plate? A. The name of the machine, and the number of the machine itself.

Q. Was that all? A. Other than that the Edison Company had a plate with wording on it somewhat different in various years, that they put on it in the early beginning—they simply stated, or put on it "Edison Manufacturing Company," and later it was changed and stated, "Manufactured by Edison Company."

Q. Is that what you call a patent plate? A. That is the only plate that I ever saw on any of their machines.

4      Q. Do you mean to say that there was not anything on that plate to indicate that the machine was a patented machine in some respects? A. I would not say it was not on there.

Q. You didn't pay any attention to it, did you? A. None whatever.

Mr. GROSVENOR: I object to this line of examination as improper for the reason that the answer of the Edison Company in this case admits that it was selling projecting machines in infringement of the patents of other companies, prior to 1909, and consequently the Edison Company could not put



a patent sign on a machine which it was selling in infringement of any man's rights, according to the answer of the Edison Company in this case. 1

Mr. WILLIS: I object to counsel for the Government interrupting the cross examination and introducing an argument, as I have a perfect right to examine this witness with respect to the character of the evidence he has been giving.

By Mr. WILLIS:

Q. Was anyone of the companies which you referred to as making projecting machines which you have sold, the Viascope Company? A. Viascope? 2

Q. Yes. A. I never sold one of their machines.

Q. Where was that company located? A. I have not any idea as to the exact name of any concern being called the "Viascope Company;" there was a machine known as the Viascope machine, made in Chicago.

Q. I understood you to say in your evidence in chief, that included in the companies from which you purchased machines was one called the Viascope Company? A. I did.

Q. You wish to correct that now? A. No, I don't wish to correct that, but I still stand on that. 3

Q. I understood you to say a moment ago that you never bought any machines of them? A. I said, I never sold any of their machines; I bought one of their machines and threw it in the scrap pile. I never sold it.

Q. Did you ever sell any machines made by the Viascope Manufacturing Company? A. No, sir. Viascope Manufacturing Company?

Q. Yes. A. Before giving a definite reply to that, I would like, if it is possible for you to give me such information as a distinction between Viascope machines and the machine that was made at Oshkosh, or Kanosh, Wisconsin, now that might have been the Viascope Manufacturing Company. 4

Q. I understood you to say that there was a company named the Viascope Manufacturing Company. I want to find out something about it. A. There was a machine called the "Viascope," and to the best of my recollection, I think it was known as Viascope Manufacturing Company.

Q. Where is that company located? A. The one I

1 have in mind was in Chicago, on Randolph Street, No. 98 Randolph Street.

Q. Who was the president of it? A. I don't think it was a corporation; it was just a little bit of a small shop, not as large as this room.

Q. Did you have any interest in it? A. None whatever.

Q. I understood you to say that the machine you bought from the Viascope Company, you didn't sell, but that you broke it up and threw it on the scrap pile? A. Sold it to the junk dealer, yes, sir.

2 Q. It was not any good? A. No, sir, it was their first experiment.

Q. What was the matter with it, do you know? A. It was simply faulty workmanship. They had no machinery to amount to anything except a drill press and a lathe, and it was mostly made by hand. Projecting machines require very great accuracy, and it necessarily could not have that accuracy, and for that reason it was not practical.

Q. Mr. Swanson, you testified in the case of the Motion Picture Patents Company against Chicago Film Exchange, didn't you? A. Yes, sir; in Chicago?

3 Q. Yes. A. Yes, sir.

Q. I am now going to ask you the same questions that were asked you in that case and read your answers to the questions, and ask you whether or not they are true? A. Yes.

Q. I refer now to cross question 285—

Mr. GROSVENOR (Interrupting): Is it at page 129?

Mr. WILLIS: I really have not got it that way. It is cross examination.

4 Mr. GROSVENOR: Yes, cross question 285.

By Mr. WILLIS:

Q. Cross question 285—this is the question, I am quoting (reading): "Are you using, or have you in possession any machine made by the Viascope Manufacturing Company? A. Which? XQ286. Viascope Manufacturing Company? A. No, I never sold one, never owned one, never had one, and would not rent film to one of them?" A. I recall making that answer.

Q. Well, now, I understood you to-day to say that you

bought one and chucked it on the junk pile? A. Well, 1  
 if you will let me explain, the way I happened to buy it—  
 it was sent over to me as a sample on consignment, and  
 Mr. Rose and Mr. Crosby, who were two young fellows  
 who had formerly worked for Mr. Selig in his shop,  
 started this little plant, and asked me to put it on the  
 floor and exhibit it to prospective purchasers, and it was  
 left there with that understanding in mind, and afterwards  
 they came around—they didn't make any money, and they  
 came around and borrowed fifty cents, and a dollar, and  
 two dollars, at a time, to live with, and finally it ran 2  
 up to about thirty dollars all told, I guess, and they stated  
 that I might keep the machine for the repayment of that  
 money, as they could not afford to pay it, because they  
 didn't have it.

Q. And that is the way you bought it? A. Yes, sir.

Q. Now, you further testified in that case, and I refer to  
 cross question No. 287, "Why wouldn't you rent film to one  
 of the Viascope machines, or the owners of one of the Via-  
 scope machines? A. Principally that the construction is  
 such that it is very destructive on the film. For that reason,  
 I do not care for their business." A. That was perfectly 3  
 right. I have already explained that, owing to the fact that  
 it was pretty much hand-made, the construction was crude,  
 and it would destroy film more rapidly than any other ma-  
 chine. However, all machines will do that.

Q. But that was the reason you would not sell them film?  
 A. That was the reason, yes, sir. It was because the ma-  
 chine was particularly badly built. Mr. Spoor used to have  
 the same identical sign up in his office in Chicago that he  
 would not rent to any one who used a Polyscope. He had a  
 sign in his office for years: "Beware of the deadly Polyscope."

Mr. WILLIS: I object to this voluntary statement 4  
 of the witness. I do not know what effect it has, but  
 he has not been asked for it.

By Mr. WILLIS:

Q. Mr. Swanson, in October of 1911, you were sued by  
 Thomas A. Edison, Incorporated, in the United States Court  
 in Chicago, were you not? A. That I cannot answer, too.

Q. Now, you ought to know whether you were sued or  
 not. A. I was not sued, nor was I served with a summons



1 of suit. I understand, however, that the New York attorneys did accept service for me. I never had any experience whatever with it.

Q. That is your explanation of that? A. Yes, sir.

Q. That suit was for unfair competition in imitating its projecting machines, was it not? A. I haven't any idea what the suit was about.

Mr. GROSVENOR: Whose projecting machine?

Mr. WILLIS: Edison's.

2 By Mr. WILLIS:

Q. As a matter of fact, there was a consent decree passed in that case, and an injunction issued, restraining you, was it not? A. That, I have not any knowledge of. In fact, I was just informed of by my attorneys yesterday, that that suit was still pending. Wanted to know what I was going to do about it.

Q. Don't you know, as a matter of fact, there was a permanent injunction issued in that suit? A. I believe there was, but I haven't any knowledge of it.

3 Q. What makes you believe there was? A. A matter of rumor. Trade paper discussion, and so forth.

Q. You had lawyers out there in Chicago to enter their appearance in the case, didn't you? A. No, sir.

Q. I thought you said your lawyers admitted service in that case? A. Messrs. Kenyon & Kenyon in New York.

Q. Well, you had lawyers, then, in New York who admitted service for you, didn't they? A. They say they did. I just learned it yesterday.

Q. And they told you there was a permanent injunction issued? A. No, sir.

4 Q. Who did tell you? A. Nobody.

Q. How did you learn it? A. I say, through rumors and reading trade papers about that period, that time.

Q. Don't you pay any more attention to injunctions than that? A. I did not go hunting it up.

Q. And that time weren't you making a projecting machine yourself? A. No, sir.

Q. Didn't you have associated with you a gentleman by the name of Mitchell? A. I did.

Q. He was a co-defendant in that case to which I have referred, wasn't he? A. I don't know.

Q. Well, wasn't Mitchell making projecting machines? 1

A. Not at the time that you mention, of this injunction. No, sir.

Q. Well, what time was he doing it? A. I have not any idea as to what time he was doing it.

Q. And what connection did you have with Mitchell in the making of the projecting machine? A. None. At no time.

Q. As a matter of fact, weren't you and Mitchell, you in some representative capacity, making a projecting machine by assembling some of the parts and by making patterns and castings for other parts, and thus assembling a projecting machine, and selling it as an Edison machine? A. I had no connection whatever with it. 2

Q. Well, that was being done, wasn't it, by somebody? A. I don't know.

Q. Wasn't it being done by W. H. Swanson & Company? A. No, sir.

Q. Sure? A. I said, no, sir.

Q. You do know, as a matter of fact, that somebody was doing that, don't you? A. I have some slight knowledge as to the fact that it was being done, yes, sir.

Q. And weren't those machines named "Edison" or "Edison Exhibition Model Style" or "Edison Projecting Kinescope?" A. I don't know what they were named. 3

Q. What is the extent of your knowledge on this subject that it was being done? A. I had a machinshop, a little repair shop rather, that was used for repair work, and I had not any further use for it, and I rented it to Mr. Mitchell, and I happened in there two or three times, and I presume from the work that I saw, that what they were doing, they were making that machine. I know they sold them to me, and I resold them.

Q. Did you sell them as Edison machines? A. No, sir. 4

Q. What did you sell them as? A. Edison style.

Q. Is that all the connection you had with Mitchell? A. That is all.

Q. And this machine shop that you rented him, was right in the rear of your front premises? A. Yes, sir. He afterwards bought the shop and owned it himself, and then sold it, I think. The reason that injunction was paid no attention to, was because he had bought it and resold

1 it to another party entirely, and the injunction had no application to anybody, if it did exist.

Q. Are you entirely out of the business of making machines now? A. Yes, sir; never was in the business of making machines.

Q. You testified in examination-in-chief that your business had grown to \$20,000 per week. I would like to know to what period of time you refer. A. 1907 and 1908.

2 Q. Take your fiscal year of 1907. What were your receipts during that year, say, from January 1st, to the 31st of December of that year, if your fiscal year ran through the calendar months? A. I did not have any definite fiscal year at any of the different places I had. You have been accustomed to hearing my places referred to as branches. I had not any branches. They were all single solitary businesses by themselves. There were no branches. I made no exchanges of goods between one office or another. Every business stood on its own foundation.

3 Q. When you refer to income of \$20,000 a week, you must have reference to some time when the week began and when it ended. A. Well, we considered the week beginning Monday and it ends Sunday.

Q. Now, what time during the year 1907 did you start? A. Started business?

Q. Start to jump from some amount to \$20,000 a week? A. About September.

Q. September, 1907? A. Yes, sir; from that time on, yes.

4 Q. What had you been making before that, per week, if you please to call it; your gross income? A. I would say it would do better to call it gross receipts, for the reason that my business was not confined entirely to renting films. I did an extensive merchandise business as well.

Q. Are you able to separate what you made out of commerce and what you made out of your exchange business? A. No, and I can explain that on the ground that it was an absolutely new business, this film exchange business, and we had—when I say “we”—I refer to all of the exchange men—had a great deal of difficulty in finding bookkeepers who could devise any method or way or system of keeping books properly or systematically for us; and we were all up in the air in that respect, and I doubt whether any man could tell you, even the volume of business he did in



any one month in 1907. I spent many thousands of dollars putting in systems and spent twice as much taking it out, so that it was in a confused state all the time. 1

Q. What kind of merchandise business were you in? A. The buying and selling of carbons, condensers, lenses, tickets, supplies of various kinds, blueprints for theatres, seats, decorations for theatres, organs, pianos, phonographs, and such as that.

Q. The moving picture exchange business was a sort of a by-product of yours then? A. No, sir; that was the principal business of the exchange, but, unlike the Eastern men, the Western men carried a full line of everything in connection with the business in a film exchange, for the reason that it is more of a mail order business in the West than it is in the East. 2

Q. So you are unable to tell me how much you made during the years 1907 and 1908, out of your commercial enterprise, and what you made out of your film exchange enterprise? A. I am unable to give you—

Q. (Interrupting): And by “made” I mean gross receipts. A. It would be—I certainly could not give it to you from my memory. It perhaps might be accomplished by going over all my old books that I still have preserved. 3

Q. I understood you to say that notwithstanding you employed expensive and modern devices, that you were unable to discriminate— A. (Interrupting): To determine satisfactorily, yes, sir.

Q. So that even with your books, you could not do it, could you? A. I say it might be possible to arrive at it approximately, but nothing accurate.

Q. Where are your books? A. In Chicago, some in St. Louis, some in New Orleans—

Q. (Interrupting): Do you object to presenting them? A. Not at all. 4

Q. Will you do it? A. I don't know how I will gather them up. If you will suggest how, I can do that.

Q. It is not my property. Probably, if it was, I could. A. Well, I have not any inclination to run up there and get them at my own expense.

Q. I suppose, you then decline to produce them? A. Yes, if it is any trouble or inconvenience to me, I will, certainly.

Q. Now, approximately, what did you purchase, of mo-

1    tion picture films for your Chicago office, and what did it amount to, in November, 1908?    A. That would be impossible to answer from memory, owing to the fact in those days the system of selling film was somewhat different from to-day. No regular releases, and I would sometimes go over to the various representatives who were selling film, and buy maybe \$5,000 worth, \$10,000 worth, or \$25,000 worth at one time, without regard to duplications, and without regard to the fact that we already had them on hand. That I had the same subject on hand.

2       Q. Don't you know, as a matter of fact, that they did have releases in November, 1908?    A. I never heard of such a thing.

      Q. That is, two months before the Patents Company was formed.    A. Two months before the Patents Company was formed; November, 1908? Refer to your notes, please, and get yourself straightened out. When it was formed, I have no knowledge of. It was never announced until 1909. I never heard of it until three days before this meeting at the Imperial Hotel.

3       Q. That was on the 11th of January, wasn't it?    A. January 9th, 1909.

      Q. I am asking you in reference to November, 1908?    A. I beg pardon.

      Q. Your apology is accepted.    A. 1907 I had reference to there. Yes, 1908, they did have release dates in November.

      Q. Yes. Now, the reasons you gave for not answering my questions are not true as to November, 1908, are they?    A. Not altogether so, no. I paid no attention to the release dates.

4       Q. Then I will ask the stenographer to repeat the question to you.

      The stenographer repeats the question.

      A. It would be impossible for me to answer that question. I have not any conception of what I bought.

      Q. Have you any books that would enable you to say what you purchased?    A. I perhaps have. I am not certain as to that.

      Q. You don't know whether you have or not?    A.

When I closed my various businesses up, I did not go to any great amount of trouble in preserving books. 1

Q. Were you purchasing one copy of each release of the Edison licensees at that time? A. I could not say as to that. Very likely I was. I was one of the heaviest buyers of films, I guess, in the country.

Q. What did you buy in December, 1908? A. I have no knowledge.

Q. What did you buy in January, 1909? A. I have not any knowledge of that, either.

Q. Without repeating the question again with reference to your other two exchanges, with reference to November, December and January, are you able to state what you purchased for each of those exchanges? A. No, sir, I can answer it in a broad way that before the agreements were entered into between my various businesses and any licensees, either Edison or the Patents Company, that the quantity was lived up to and bought. How much in excess of it, however, I don't know. 2

Q. Did you have any trouble in paying your film bills to the manufacturers from whom you purchased or leased film? A. When? 3

Q. Well, during the months I have referred to, November and December in 1908, and January of 1909? A. Yes, I had—I don't know as to the months, but I know it was just shortly before—I cannot just exactly locate the period of time, but I did have correspondence; either one or two letters to the Biograph Company regarding the payment of a bill.

Q. Were you making profits at the rate of \$100,000 a year? A. Very easily.

Q. Gross profits? A. Yes, sir.

Q. That is, from your combined business? A. Yes, sir. 4

Q. Are you in debt at the present time to any of the manufacturers licensed by the Motion Picture Patents Company? A. No, sir.

Q. Are you sure about that? A. I think there is one that thinks I owe him some money. Mr. Selig, I think, thinks I owe him some money, but I do not. After the cancellation took place, there was quite a number of manufacturers, whom I owed for current accounts, who offered to compromise with me, and I refused to compromise on



1 the ground that I wanted to pay them in full, which I did.

Q. Had you paid up to the licensed manufacturing companies, all that you owed them for films furnished you on January 1st, 1909? A. I am not going to answer that question, for the reason that you do not permit in the asking of the question, of explanations as to the conduct of the business and the customs of the business.

2 Mr. GROSVENOR: I would suggest that counsel change that to, "Had you paid all that was due them at the time?"

By Mr. WILLIS:

Q. There was a license agreement which stipulated the manner in which you should pay for the films purchased from these manufacturers, was there not? A. There was a license agreement submitted at the Imperial Hotel in New York in January, 1909, that allowed the person whom it was presented to for signature, and agreement to, a period of something like five days, or a short period of time  
3 in which to make up their mind to sign it, and they would not allow sufficient time for a readjustment of the business. Changed the business customs and conditions; and, prior to that agreement, I had been paying manufacturers in lump sums up to as high as \$20,000 at one time. And they readjusted this at a moment's notice, and said, "Go and get all this money and pay us when we lay those goods on your counter." It was a physical impossibility in my business, because I had previously, just prior to that time, invested \$90,000 in construction work in buildings.

Q. Now, Mr. Swanson, I am not speaking of the meeting of the 9th of January, I am speaking of the first of July, 1909. A. In answering your question, I take it, would place me in a false position, and in a false light, and I am trying to answer your question so as to lead up to the conditions that existed prior to that time, and why they were not fulfilled in the period of two or three weeks that these men demanded. It was a physical impossibility.

Q. When did you settle up with them, all except Mr. Selig? A. I do not recall. Whenever I found it conven-

ient to spare the money, at various times. I was not in any particular hurry about settling with them. I did not have a friendly feeling towards them. 1

Q. You have not now, have you? A. Well, it had better not be said, I guess.

Q. Well, I have asked you the question? A. I refuse to answer it.

Q. Do you know what percentage of profit, on the average, you made out of your business of film rental exchanges? A. The percentage of profit? No.

Q. Well, was it a 100%, 50% or 25%? A. I have not any idea.

Q. Was it 10%? A. I have no conception of what percentage it was. 2

Q. In your agreements with the manufacturers licensed by the Edison Company in 1908, was there any provision calling for the purchase of a given amount of motion pictures each month by each exchange? A. There was. I do not recall whether it was so much each month or each week. My opinion is it was so many reels per week. Three reels per week.

Q. From each one? A. Oh, no. Total. Total purchases of three reels a week. That was put in that license agreement by my own suggestion, to satisfy Mr. Berst, in order to get him to go in the proposition at all, for the reason that he was selling films to every film buyer in the United States, and they were making three reels a week, and to satisfy him that he would still hold that, we put a clause or condition in that contract that everybody must buy three reels a week. 3

Q. Don't you know as a matter of fact that what you have stated was not in the agreement, but was one of the by-laws of the Film Association? A. Well, no, I don't know that to be a fact. I do not question it. 4

Q. You prepared those by-laws, didn't you? A. I prepared a good many sets of by-laws.

Q. I understood you to say, in chief, that you did prepare them, I may be wrong. A. I did, yes, sir.

Q. Mr. Swanson, I observe by a bulletin issued under date of January 9th, 1909, of the Film Service Association, No. 39, and which purports to bear facsimile signatures of the President, Vice-President, Treasurer, yourself and two others, and the printed signature of D. MacDonald, Secre-

1 tary, it contains thereon the words on the last page, which are printed, "The cardinal points for which the Association has stood (which are the doing away of sub-renting, the elimination of distributing offices, and the requirement that an exchange to be upon a legitimate basis must buy a considerable amount of film to be shipped direct to each office which it is operating) have been established, and are now recognized in the Patent Company's new agreements." You concurred in that bulletin, didn't you? A. The portion of that bulletin that I concurred in—

2 Q. (Interrupting): Now, Mr. Swanson, won't you direct your answer to the quotation that I have given, and if you desire to make any explanation, go on and do so? A. That quotation, I have no recollection of concurring in it at all.

Q. Well, why did you sign the bulletin? A. The bulletin was brought out by Mr. MacDonald while I was standing close to Mr. Harry Davis at the Western Union Telegraph station. Mr. MacDonald came over with a written instrument, and he said, "We have decided to split our treasury of the association, and the boys want to vote me a thousand dollars." He said, "If you are in favor of this step, put your name down there," and I did, without reading it. This  
3 part of it here, is his (indicating), and I know nothing about that (indicating).

Q. As a matter of fact, had not you been working in the Film Service Association meeting, to have just such a provision as quoted from that bulletin, contained in all license agreements? A. Working in—read the question, please.

The stenographer reads the question.

By Mr. WILLIS:

4 Q. Or brought about in some other way? A. I think you meant "meetings" instead of "meeting," didn't you.

Q. Yes, "meetings." A. I certainly did, yes, sir. That is, the paragraph relating to the fact that there was a required number of reels to be purchased each week.

Q. I am referring to the portion which I have quoted from the bulletin. A. Yes, sir.

Mr. WILLIS: Mr. Examiner, will you mark that paper as an exhibit.

The paper is marked "Defendant's Exhibit No. 1, and is as follows:



**Defendants' Exhibit No. 1.**

1

ALL BULLETINS SHOULD BE FILED.

Final Bulletin No. 39.

January 9, 1909.

FILM SERVICE ASSOCIATION.

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Note.—Bulletins Issued by the Executive Committee Are Private Communications to Members of the Association Only.

2

**REPORT**

of

**ANNUAL MEETING, JANUARY 9, 1909.**

The annual meeting of the Film Service Association was held at the Hotel Imperial, New York City, on Saturday, January 9, 1909. Mr. James B. Clark, the President, called the meeting to order, and after the roll-call it was ascertained that over one hundred memberships were present or represented by proxy. The minutes of the last meeting were read and approved as was also the report of the Treasurer, showing that the Association had a cash balance on hand on January 8, 1909, of \$17,519.18.

3

**REPORT OF SPECIAL COMMITTEE.**

The meeting then listened to the report of the Special Committee, Messrs. Robert Lieber, Harry Davis, A. J. Gilligham, Mr. Wurzer and Carl Laemmle, which had conferred with the officers of the Motion Picture Patents Company regarding the conditions contained in the new license agreements. This Committee was appointed at the informal meeting of the Association held on Friday, January 8, 1909, at which the new features in the license agreements were very thoroughly explained and discussed. Messrs. Lieber and Gilligham both spoke for the Committee, and advised the meeting that the new conditions were in the main satisfactory, and that the Patents Company's license

4

- 1    should prove desirable to all members who wished to build up the business upon legitimate lines. They also said they had assurances from the Patents Company and the Manufacturers that led them to believe that no exchange dealing fairly under the new agreements would suffer. They announced that the Patents Company would arrange to collect directly from the exhibitors the royalties due the Company from exhibitors, for the licenses covering the projecting machines.

## 2                      MOTION PICTURE PATENTS COMPANY.

The enclosed announcement of the Patents Company had been distributed prior to the meeting, as well as copies of the license agreement, and the Executive Committee referred the entire matter to the Association, suggesting that it was better for each man to work the situation out for himself according to the way it would affect his particular business.

- 3    Mr. Macdonald, who had been employed by the Executive Committee of the Association during the past year to perform the duties of Secretary for the Committee, announced to the meeting that he had been appointed General Manager of the Motion Picture Patents Company, and that his duties as such would begin on Monday, January 11, 1909. He asked to be relieved from the duties of Secretary as soon as new officers were elected.

The meeting then proceeded to the election of officers, and as a result of the voting the following officers for the year 1909 were chosen:

- 4                      President, William H. Swanson.  
                         Vice-President, Carl Laemmle.  
                         Secretary, Herbert Miles.  
                         Treasurer, Robert Lieber.  
                         Executive Committee, } A. J. Gilligham,  
    } William Fox,  
    } William F. Steiner.

## CHANGE IN THE ASSOCIATION RULES.

After the new officers took charge of the meeting it was determined by the Association that the old by-laws, rules

and regulations be set aside and that the Association here-  
 after be conducted more as a general social and business  
 men's association, with nominal dues of \$25.00 per year,  
 payable \$12.50 semi-annually in advance. This decision was  
 reached principally because of the fact that the Patents  
 Company does not purpose to deal exclusively with the  
 Association, but has licensed other exchanges than those  
 in the Association. While the Company will give every  
 consideration to the ideas and wishes of the Association  
 members as expressed by their executive officers it will also  
 give the same consideration to the individual opinions ex-  
 pressed by Exchanges dealing directly with the Patents  
 Company, and will give an equal opportunity to all of its  
 licensees whether members of the Association or not.

### DISTRIBUTION OF ASSOCIATION FUNDS.

After the election of the new officers and just before  
 they were installed the meeting decided, in view of the  
 changed conditions in the Association, that the funds on de-  
 posit in the Association treasury be redistributed to the  
 memberships in good standing. It was therefore voted to  
 divide \$15,500, which entitled each membership to receive  
 the sum of \$130. Following this \$500 was voted to the  
 Red Cross Society of America for the Italian sufferers, and  
 the outgoing Treasurer was also instructed, by the unani-  
 mous vote of the meeting, to hand to Mr. Macdonald, the  
 retiring Secretary, the Association's check for \$1,000, as an  
 expression of the Association's good will.

A vote of thanks was given to the Executive Committee  
 and to the Secretary, and the meeting decided that loving  
 cups should be presented to the retiring officers as an ex-  
 pression of the Association's appreciation of their services.

### FINAL REPORT.

The above outlines all the business transacted while the  
 retiring officers of the Association were still in, and the  
 above report completes the history of the Association's  
 work up to the time when the present officers for 1909 took  
 charge of the Association's affairs. It is left to the new  
 officers to report to the members regarding what has oc-



1    curred since they have been the representatives of the Association.

2    In laying down the work of the Association the Executive Committee and the Secretary desire to formally thank all of the members of the Association for the many expressions of confidence which they have received throughout the past year, and also for the hearty co-operation which they have had from all of the members in the carrying on of their work. It has of course been difficult to bring about results which would satisfy every one, and many times the Committee has apparently failed where it should have succeeded. But always the final judgment of the Association has been favorable to the Committee, and in the end, probably all the members of the Association are satisfied that the Committee has done all that could have been accomplished.

3    While the results have not been obtained very rapidly and there are not many examples to indicate the progress which has been made, yet the new license agreement issued by the Patents Company is nothing more or less than a testimonial of the work of the Executive Committee during the past year. The cardinal points for which the Association has stood (which are the doing away of sub-renting, the elimination of distributing offices and the requirement that an exchange to be upon a legitimate basis must buy a considerable amount of film to be shipped direct to each office which it is operating) have been established and are now recognized in the Patents Company's new license agreement.

4    We have every assurance now that the Patents Company is able and proposes to enforce these restrictions for the benefit of those exchanges desiring to build up the business and become a permanent part of it. The report of the Special Committee which conferred with the representatives of the Patents Company confirms this, and we hope that

the history of the coming year will bear out the hopes of  
your retiring Board. 1

Respectfully submitted,

Executive Committee of

FILM SERVICE ASSOCIATION.

JAMES B. CLARK,  
President.

F. C. AIKEN,  
Vice-President. 2

P. L. MATTIS,  
Treasurer.

W. H. SWANSON,  
G. Y. HOWARD,  
D. MACDONALD,  
Secretary.

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By Mr. WILLIS: 3

Q. How many suits pending in the United States of America against the Motion Picture Patents Company or some one of the licensed manufacturers and members of the General Film Company, have you testified in? A. Suits against these parties?

Q. I mean one side or the other? A. Oh, that is different.

Mr. CALDWELL: Suits by or against?

Mr. WILLIS: Yes, by or against?

A. Only two, I think. 4

Q. Will you name them? A. I think it was in the case of the Melies Company in Chicago against the Patents Company. That is, I don't know whether suit was brought. I testified in Chicago; and the testification in affidavit form of the Greater New York Film Exchange against the Patents Company. I don't recall any others.

Q. How about the Motion Picture Patents Company against the Chicago Film Company? A. I guess that was the suit I referred to as having taken place in Chicago. I think

1 that was the Chicago Film Exchange suit with the Patents Company—yes, I had no dealings whatever with the Melies. None whatever. It was the Chicago Film Exchange. The reason I got confused is because Mr. Lewis is the head of both concerns.

Q. Who is this gentleman sitting here (indicating Mr. Lewis)? A. That is Mr. Lewis.

Mr. WILLIS: I object to his shaking his head at the witness. I do not mean to say it has any effect on the witness at all, but I object to it.

2 Mr. LEWIS: I want to remind him he testified in the other suit.

Mr. WILLIS: You need not remind him of anything at all. You just keep yourself to yourself or I will ask that you be ejected from the room, or leave the room. I do not mean at all to suggest, Mr. Swanson, that you will be influenced at all by the nod of Mr. Lewis—

The Witness (Interrupting): It just struck me as humorous that he wanted to remind the witness.

3 Mr. GROSVENOR: I want to state for your information that Mr. Lewis is a witness summoned on behalf of the Government, and that is the reason he is here.

Q. Now, Mr. Swanson, there are no other suits that you can recall? A. None that I recall of at present.

Q. Now, I learn by the testimony that has been given in this case, and otherwise, that there have been two cases pending in New York, the Greater New York Film Rental Company against the Motion Picture Patents Company and others, pending in the State court and another suit of the Greater New York Film Rental Company against the Biograph Company and General Film Company, in the Federal Court. Have you not filed or exhibited affidavits in each of those cases or testified before some officer? A. I have not testified before anyone. I have testified in affidavit form—yes, I think you are right. There is in both courts—I am not quite sure of that, though. I think that is the case.

Q. Now, Mr. Swanson, what business are you now en-



gaged in? A. I am in the theatrical business; I am in the film exchange business; I am in the film manufacturing business. 1

Q. What do you mean by the theatrical business? A. I own and operate a number of theatres.

Q. And where are they located? A. And road shows, travelling shows.

Q. Where are your theatres located? A. In Western States.

Q. Won't you name them? A. I would rather not.

Q. Do you decline to name them? A. Yes, sir.

Q. Do you exhibit in those theatres moving pictures? 2  
A. Some of them.

Q. Don't you exhibit moving pictures in all of them at times? A. No, sir.

Q. How many theatres do you operate? A. I would rather not say.

Q. You decline to state? A. Yes, sir.

Q. You have theatres at various points in the West of this country? A. Yes, sir.

Q. And you have traveling companies, theatrical companies? A. Just one.

Q. That exhibit or perform at the various theatres? A. 3  
Not in my theatres, no.

Q. Not in your theatres? A. No, sir.

Q. The theatrical business of having actors in a company is entirely distinct from the operation of your theatres in the West? A. Positively, yes, sir. My theatrical company never gets beyond the Mississippi River.

Q. And your theatres are all beyond the Mississippi? A. Yes, sir.

Q. Where is your office? A. In the Mecca Building, 1600 Broadway, New York City.

Q. Well, have you an office for each one of your three distinct business operations that you have named? A. I 4  
have no—the office mentioned in the Mecca Building is not my office. It is the Secretary's office of the Universal Film Manufacturing Company. I am the Secretary.

Q. You are the Secretary? A. Yes, sir. The other offices I have are located in El Paso, Denver and Salt Lake City.

Q. Did I understand you correctly to say that you

1 assisted in preparing the license agreement between the Edison Company and the exchanges in 1908? A. I did not assist—

Q. (Interrupting): You say you did not say so? A. I did not say that I assisted in preparing the license agreement. I stated that in order to hold out as an inducement to the Pathe people to come in and act under that license, that inasmuch as Mr. Berst was in South America at that time, on his return, that we would assure him that every person working under that license agreement, and to be a member of the Film Service Association, purchase not less  
2 than three reels per week in each office.

Q. My question is, didn't you assist in the preparation—  
A. (Interrupting): Only to that extent. In talking with Mr. Dyer.

Q. I understood you to say that you prepared the by-laws of the Film Service Association? A. Yes, sir.

Q. Will you kindly look at the pamphlet I now produce, and I refer especially to Articles 1 and 2, and ask you to read them, and state whether or not Articles 1 and 2 referred to, are not a part of the by-laws of the Film Service Association which were prepared by you?  
3

Mr. WILLIS: Let it be marked first.

The articles of the pamphlet are marked "Defendant's Exhibit No. 2, E. H.," and are as follows:

## **Defendants' Exhibit No. 2.**

### **FILM SERVICE ASSOCIATION**

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#### **BY-LAWS.**

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#### **ARTICLE 1.**

Section 1. The name of this Association shall be the Film Service Association.

Section 2. This Association is organized for the purpose of promoting and safeguarding the interests of the film-rent-

ing concerns of the United States, of their customers the exhibitors, and of that portion of the public which patronizes moving picture shows. 1

## ARTICLE 2.

### Membership.

Section 1. Any individual, partnership or corporation conducting a legitimate film-renting business in the United States is eligible to a membership in this Association for each and every separate film-renting exchange owned or maintained by each individual, partnership or corporation. 2

Section 2. For the purpose of membership in this Association a "legitimate film-renting business" shall be one equipped to do a self-sustaining film-renting business independent of any other office or concern, that purchases new film for renting purposes to the average amount of at least \$1,200.00 per month.

Section 3. Any eligible individual, partnership or corporation desiring to become a member of this Association shall sign a written application for membership, stating the name and office address of the applicant, the names of the partners, the names of the officers or directors, if a corporation, and the name of the person who will represent the membership in the Association in the case of a partnership or corporation, that in how many, if any, moving picture shows the applicant is interested, either directly or indirectly, and the names under which they are operated, and whether the applicant will, if elected to membership, give a pledge not to rent film to any person or persons whom the applicant knows to be re-renting it. 3 4

Section 4. If any member fail to pay to the Treasurer the annual dues, or any part thereof, any special assessment or assessments, within ten days from the date on which they are due, the Treasurer shall notify the Executive Committee who shall thereupon declare such member suspended. The Executive Committee shall reinstate such suspended member at any time within thirty days of his suspension provided that all money due the Association by such sus-



- 1    pending member shall be paid before the application for re-instatement is considered.

- 2    Section 5. If, subsequent to election, the business of any member be conducted in known opposition to the purposes of this Association, as set forth in these By-Laws, or if subsequent to election, the member shall not comply with the requirements of membership, as expressed by these By-Laws, the Executive Committee shall, after receiving a complaint as to the conduct of such member, make an investigation thereof and give such member a hearing and if after such investigation, four members of the Executive Committee shall vote that the investigation is unfavorable to the member, then a printed report of such investigation, giving the full facts in the case, shall be prepared and mailed to each member of the Association. Upon receiving this report, each member of the Association shall mail a ballot prepared and furnished with such report, in favor of, or against the permanent suspension or expulsion of such member, and two-thirds of the members of the Association signifying in this manner that they favor the permanent suspension or expulsion shall suspend or expel such member, otherwise the charges shall be dropped and the member exonerated.

By MR. WILLIS:

Q. You have testified that manufacturers were members of this association? A. Film manufacturers.

- 4    Q. After having read the articles referred to, I will ask you whether a manufacturer could become a member of the Film Service Association? A. Neither one of those articles refer as to whether he can or not, except by inference, but we did have, I think, a rule in the association that while they were members, they had not any vote. That is very true. There was no film manufacturer allowed to vote.

Q. Did you have any dues in that association? A. Yes, sir; I think so.

Q. Did the manufacturers pay it? A. I cannot say as to that. I was not Treasurer. I know nothing about that.

Q. You don't know. You were President for a while? A. Well, during the time I was President of it it was during a period where dues could not possibly apply to. The dues, I guess, were payable semi-annually or annually.

Q. I will ask you now to look at bulletin No. 8, dated

March 19th, 1908, issued by the Film Service Association, and state whether or not that contains a true statement of the methods of the Film Service Association as of that date? A. You did not get a reply to those two articles in those by-laws, Mr. Willis. 1

Q. You are not through answering? A. I did not answer at all on that.

The stenographer repeats the last six questions and answers.

By Mr. WILLIS: 2

Q. If you have something else to say with reference to the by-laws— A. (Interrupting): I want to correct that.

Q. Correct what? A. The statement he has just read, about the vote. It is not clear in my memory whether the film manufacturers were refused the vote, or whether they were not eligible to be officers of the association. I think—I am very much inclined to the opinion that we had a ruling that they were ineligible to office in the organization, but could vote. They paid their initiation fee, and paid their dues, so far as I could see, in the ordinary transaction of business. 3

Q. Now, repeat my question with reference to the bulletin, please.

The stenographer repeats the question.

A. It is not a true list, no, sir.

Q. Isn't it one of the official bulletins put out by the Film Service Association? A. It has the appearance of one of those bulletins. There were earlier bulletins issued than this, showing a complete list of members, which included the manufacturers. 4

Q. Will you produce one of them, please? A. I haven't it.

Q. Are there any manufacturers on the list which I have just handed you? A. None whatever, no, sir. I do know that every manufacturer that I have sworn to as being members of that association, were members, because I was the person that first received their money. Their initiation. I had all of their money the first two or three months of the organization, and I know that all the manu-

1   facturers paid me, and I took very particular pains to see that they did pay me.

Q. You were Treasurer of the— A. (Interrupting): I was President and Treasurer, practically. I was not the official Treasurer, but the man who was Treasurer at the time, there were suspicions as to the feasibility of turning the money over to him, and I was advised to keep the money in my possession, which amounted to several thousand dollars, which I did keep for quite a while.

2   Q. Did you ever object to the bulletin as being incomplete? A. The bulletin was issued to my satisfaction, for the reason that it would have been superfluous to have added the manufacturers' names, for the reason that it was only issued to the film exchanges, and it was an established fact, and a well known fact among all of them, that the manufacturers were members, and the previous bulletins and the previous notifications to them had included those names.

3   Q. I show you another bulletin of the Film Service Association, No. 20, dated August 1st, 1908, and ask you to look at it and tell whether or not the language used thereon is as follows: "The following is a complete list of all authorized memberships, with the addresses to which film may be shipped," and ask you whether that language is correct? A. Yes, sir, a correct bulletin going out for the benefit of the manufacturers, to notify them to whom they might ship association film.

Q. It was sent to the members of the association, wasn't it? A. It was likewise sent to them for a memorandum for corrections, if there were any corrections. It states specifically there to whom film may be shipped.

4   Q. The bulletin states that it is issued by the Executive Committee, that all bulletins issued by the Executive Committee are private communications to the members of the association only. A. That is true. The manufacturers were members, certainly.

Q. Are there any manufacturers' names on bulletin No. 20? A. It was not going out for the purpose of showing a list of members.

Q. Will you answer my question? A. No, sir.

At this point, on this Thursday, January 23rd, 1913, the hearing was adjourned, until Friday, January 24th, 1913, at 10 o'clock A. M., at the Hotel McAlpin.



IN THE  
DISTRICT COURT OF THE UNITED STATES,  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

1

UNITED STATES OF AMERICA, Petitioner,	} No. 889. Sept. Sess., 1912.	} 2
v.		
MOTION PICTURE PATENTS CO., and others, Defendants.		

New York City, January 24th, 1913.

The hearing was resumed pursuant to adjournment at 10 o'clock A. M., on this January 24th, 1913, at the Hotel McAlpin.

Present, on behalf of the Petitioner, Hon. EDWIN P. GROSVENOR, Special Assistant to the Attorney General. 3

JOSEPH R. DARLING, Esq., Special Agent.

Present also, Messrs. GEORGE R. WILLIS and FRED R. WILLIAMS, appearing for Motion Picture Patents Company, Biograph Company, Jeremiah J. Kennedy, Harry N. Marvin, and Armat Moving Picture Company.

Mr. J. H. CALDWELL, appearing for William Pelzer, General Film Company, Thomas A. Edison, Inc., Kalem Company, Inc., Melies Manufacturing Company, Pathe Freres, Frank L. Dyer, Samuel Long, J. A. Berst and Gaston Melies. 4

Mr. HENRY MELVILLE, Attorney for George Kleine, Essanay Film Manufacturing Company, Selig Polyscope Company, George K. Spoor and W. N. Selig.

Mr. JAMES J. ALLEN, appearing for Vitagraph Company of America, and Albert E. Smith.

Mr. DWIGHT MACDONALD, appearing for Mr. Rowland.

1      Thereupon WILLIAM H. SWANSON resumed the stand.

Cross examination (continued) by Mr. WILLIS:

Q. Mr. Swanson, when you consented to the terms of this license agreement of the Patents Company, did you live up to the terms of it after you had signed it, and sent it back?  
A. I thought I did in all respects; I tried to.

Q. Did you buy or lease \$2,500 of film for each of your exchanges? A. Per month?

2      Q. Yes. A. I didn't have a license for a month; I didn't have an opportunity to buy that much.

Q. Take the month of January, 1909, your license was not cancelled until March? A. Cancelled in February.

Q. You received notice in February, but it was not cancelled until fourteen days thereafter? A. It was cancelled thereafter immediately because no material was delivered, no film, to me after I got the telegram, with the exception of one or two reels.

Q. What were the instances you refer to? A. The one or two reels?

3      Q. Whatever you mean by that? A. I mean to say by that, that the Patents Company did not carry out their agreement under their contract to deliver film to me for two weeks after notifying me of the cancellation; that they immediately stopped delivery in all cases, with the exception of one or two.

Q. Well, name those one or two? A. I don't recall who they were, but I think, however, I received some Pathe film, and I believe some Selig—no, I didn't receive any Selig.

Q. Did you furnish a list of your exhibitors? A. I did.

Q. When did you furnish that? A. To Mr. Church the day that he called at the office that I referred to on yesterday.

4      Q. Was that in January, 1909? A. Yes, sir. I likewise sent in a list to the Patents office by mail.

Q. In writing? A. Yes, sir.

Q. Now, was it a complete record of your exhibitors? A. Yes, positively.

Q. On page 296 of the printed testimony, in answer to Mr. Grosvenor's question as to "how many customers, stating it approximately, did you have in the beginning of the year 1909, and by 'customers' I mean owners of theatres or exhibitors of moving pictures?" And you answered: "I would judge between six hundred and seven hundred."

How many customers or exhibitors did you have in January, 1909, at the exchange called "William H. Swanson & Company," at 160-162-164 Lake Street, Chicago, Illinois? A. I have no means of giving you definite information regarding it at this time. 1

Q. The reports that you made at that time were accurate?

A. So far as I know, yes, sir. The list of customers that a film exchange may have may vary, and would vary sometimes from ten to a hundred.

Q. I am asking you of January 18, 1909. Now, you have already testified, as I understand, that these lists were accurate as of the time they were made? A. Well, I testify that I mean by saying that that they were accurate in that I had full confidence in the employees I had making the lists out; the actual lists themselves I have never seen. 2

Q. You didn't give any instructions to give any fewer than you really had? A. I have always tried to be as honorable as anyone in the world can be in business.

Q. Well, that is right, every man should be complimented for doing that. Now, how many customers in the month of January, say on the 18th of the month, 1909, had the exchange "William H. Swanson, Dixie Film Company, 720 Mason Blanche Building, New Orleans, Louisiana?" A. My memory does not recall the number. 3

Q. The report made at that time would indicate accurately the number? A. It should do so, yes, sir.

Q. Well, now, how many customers, or exhibitors, did you have as of January 17th, 1909, at the exchange called "William H. Swanson, St. Louis Film Company, 200 Seventh Street, St. Louis, Mo.?" A. I make the same reply in that case; that I have no memory of it.

Q. You believe that the list that was furnished to the Patents Company at that time to be accurate? A. I believe it to be. In all cases it was sent from the cities that you refer to without my seeing it, or knowing anything about them. 4

MR. GROSVENOR: We object to this line of cross examination as not fair to the witness, the reason being that the question as asked, shown on page 296, asks for the number of customers of the exchanges, whereas the lists produced by counsel for defendants contain simply lists of customers who buy film, as I under-



- 1      stand it. Therefore, the comparison is not an accurate one, the witness having testified that as a rental exchange he distributed a large number of articles which he named yesterday.

Mr. WILLIS: I enter objection to counsel for the Government introducing an argument as an objection, and thereby leading the witness upon the subject matter.

By Mr. WILLIS:

- 2      Q. Mr. Swanson, on page 311, on the printed copy of the testimony, you stated in the first paragraph (reading): "And they likewise telegraphed my customers that I had been shut off from supply." Does the word "customers" there refer to the same persons whose names and addresses were contained in the several reports that were made in pursuance of your license? A. I have no means of knowing as to where they derived the names in all cases of the parties they telegraphed to; I would imagine if they telegraphed any they telegraphed all on that list, as well as any others I may have had subsequent to the sending of that list.
- 3      Q. Will you repeat that question again?

The question was repeated to the witness as follows: "Q. Mr. Swanson, on page 311 of the printed copy of the testimony, you stated in the first paragraph (reading): 'And they likewise telegraphed my customers that I had been shut off from supply.' Does the word 'customers' there refer to the same persons whose names and addresses were contained in the several reports that were made in pursuance of your license?"

- 4      A. I do not get the full meaning of the question.
- Q. What did you mean by the word or term "supply," when you said that "I had been shut off from supply?" What did you mean by "supply," supply of what? A. The subject matter in question in this discussion.

Q. Well, what was it? A. They had nothing but one thing to supply, and that was film.

Q. Then the term "customers" referred to, must have had reference to the persons to whom you were supplying the film, did it not? A. Yes, sir.

Q. Without intending at this time to introduce the lists of customers referred to, I will ask the witness to look at the sheets, and to add up the number of customers and tell me how many in the aggregate he had on the respective dates of these reports. 1

Mr. GROSVENOR: I object to the question as unfair and improper cross examination, for the following reasons: In the first place, the sheets which are detached, are not shown to be the complete reports by any proof; secondly, one of the sheets contains the statement, "List incomplete account lost records and lost by fire"; and another sheet contains the statement that "We are furnishing in addition a seven house circuit in Iowa." It is manifest that the question of counsel is merely for the purpose of comparing the figures as shown by the additions with the statements made by the witness on direct examination, and therefore the comparison is unfair for the reasons I have stated, and that is the reason I object to the question. 2

Mr. WILLIS: The lists are not offered in evidence at this time.

Mr. GROSVENOR: The only purpose in asking the witness to examine and add them up is, of course, to compare with the figures that he gave on his direct examination. 3

Mr. WILLIS: That may or may not be my object in doing so. I merely ask the witness to add up the lists.

Mr. GROSVENOR: The witness will now add up the names, counsel for the Government having entered his objection.

The Witness: Is this supposed to be the list of St. Louis on one page? 4

Mr. WILLIS: A page.

The Witness: This sheet (referring to a paper) shows fifty-two.

By Mr. WILLIS:

Q. What sheet is "this sheet?" A. Swanson St. Louis Film Company, St. Louis, Missouri.

1      Q. Fifty-two? A. Yes, sir. Next, Swanson Omaha Film Company sheet, Omaha shows twenty-five. That is very incomplete because on the 9th day of January the place burned up, and it was just in the course of starting over again; we had the books destroyed there.

Mr. GROSVENOR: I ask the Examiner to mark these different sheets as exhibits for identification and to keep them with the other exhibits so that they may be on hand for further examination.

2      Mr. CALDWELL: These exhibits for identification should go back to counsel for defendants, subject to their being produced at any time counsel wants them.

Mr. WILLIS: They are not introduced for any other purpose than to have the additions made.

The EXAMINER: The sheet entitled Swanson St. Louis Film Company, is marked

**Defendants' Exhibit No. 5, for Identification.**

3      The sheet entitled Swanson Omaha Film Company is marked

**Defendants' Exhibit No. 6, for Identification.**

The two sheets entitled William H. Swanson Dixie Film Company, New Orleans, is marked

**Defendants' Exhibit No. 7, Two Sheets, for Identification.**

4      The Witness: The two sheets showing William H. Swanson & Company, Chicago, have got 100 names on them and a notation stating that there were seven not as yet reported.

The three sheets entitled William H. Swanson & Company, Chicago, are marked



## Defendants' Exhibit No. 8, Three Sheets, for Identification. 1

Mr. GROSVENOR: I wish to request the Examiner, when you refer to this Defendants' Exhibit No. 6, for identification, which appears right after the answer of the witness, to state that this exhibit has upon it in writing this note, or the following note: "List incom<sup>2</sup>plete account lost record and lost by fire, S. O. F. Co., H. R., Mgr."

Mr. WILLIS: Will you also put on the record that on a sheet of Defendants' Exhibit No. 8, for identifica- 2  
tion, the following: There is attached to the Chicago sheet, constituting one of the three sheets mentioned in that exhibit, the following, in the following language: "In addition to these we are furnishing a seven house circuit in Iowa, names to be sent in later when required."

Q. Can you tell me the number of customers in the aggregate on those four exhibits (indicating)? A. No, sir, I did not stop to total them. 3

Q. I wish you would. Will you tell me the aggregate of the number of customers in those four exhibits? A. They total 251.

Q. Would you add that up again? A. Taking 52, 35, 57 and 107?

Q. No, sir. Taking 52, 25, 57 and 107? A. That is 241.

Q. Which one of those four exchanges was the largest, or had the largest number of customers, irrespective of this list that you have examined? A. Why, I should say Chicago.

Q. So that if we would put Omaha down for 75, it would probably comprehend all of the customers, even those that you could not furnish, would it not? A. Well, I have no means of saying whether it would or not, I am sure. 4

Q. If Chicago was the largest of the four, and there were 107 customers there, there could not be more than 107 in Omaha, could there? A. I do not say that the list that you have shown me—I do not accept that as a complete list of my business, any more than your statement to the effect that it is.

Q. You do not? A. I have no means of knowing that this is a complete list.

1      Q. I understood you to say that you believed them to be correct? A. I did not say that I believed them to be correct. I said that I believed lists sent in to you were correct.

Q. These were the lists sent in— A. (Interrupting): I do not know that. You have not sworn to that yet.

Q. Do you mean to say that the lists that you have examined for the purpose of adding up the number of customers were not received from your four exchanges? A. I do not know where you received them from.

Q. Have you examined the handwriting? A. Not particularly, no, sir.

2      Q. Well, look at them (handing sheets to witness)? A. I have examined it.

Q. Do you know whose it is? A. I do not.

Q. Did you keep copies of the lists that you sent in to the Patents Company? A. I do not think we did.

Q. Did you keep a list of anything that you ever wrote and sent out? A. Keep a list of anything?

Q. A copy of it? A. Of anything we wrote and sent out?

Q. Yes. To the Patents Company? A. I hardly think so.

3      Q. Is that your usual method of conducting your business? A. Any printed forms on heavy paper such as that, which is to be filled in in longhand, and of an unusual size that won't go in a typewriting machine, I never knew of anyone making copies in longhand of anything of that character.

Q. Who would be the one in your St. Louis exchange in January, 1909, to make out these lists? A. I really could not say who would make the lists out there.

Q. You could not tell who would make it out in any of these offices? A. Only in one.

4      Q. Which one is that? A. I could not be in all the offices at one time, necessarily only one.

Q. Which one is that? A. The Chicago office.

Q. Won't you look at the Chicago list and tell me whose handwriting that is? A. I really cannot recognize it. I do not know.

Q. Well, who would be the person there who made it? A. It would be very difficult to say. I had a bookkeeper and seven assistant bookkeepers in there, and I have not any conception as to which of those would have written that.

Q. Upon whom would the responsibility of making out that list be imposed? A. Well, it is liable to be divided in

two places. It might come under the direction of the head bookkeeper, or what we call the "selection clerk," who would both have a complete list. 1

Q. Who was the head bookkeeper at that time? A. I don't remember.

Q. Did you supervise getting up the list? A. No, sir. I had a business that did not allow me to go into details. I was too busy for that sort of thing.

Q. And who was the chief clerk to whom you refer? A. I had no chief clerk.

Q. You say one of two men must have made that up, or the responsibility of making it up was imposed upon him? A. Yes, sir. I said the chief bookkeeper. Not the chief clerk. 2

Q. The chief bookkeeper—who was he? A. I do not recall. I had quite a number of them, several of them, in a period of two or three years; and I just at this moment cannot recall.

Q. Is your recollection with reference to the conduct of your business with respect to which you are now being examined, as accurate as anything else you have testified to in this case? A. What is the question? 3

The stenographer repeats the question.

A. I have not testified to anything as to the conduct of my business, yet, that I know of.

Mr. WILLIS: Repeat the question, please.

The stenographer repeats the question.

The Witness: I give the same answer. I have not been testifying as to the conduct of my business as yet, that I know of. 4

By Mr. WILLIS:

Q. Now, Mr. Swanson— A. (Interrupting): If you are willing, Mr. Willis, to accept a guess as to who the bookkeeper was, I am perfectly willing to give you who I think.

Q. I don't want any guess. You can guess if you want to, but I am not asking for guesses. A. I don't really know who was the chief bookkeeper at that time.



1 Q. Now, in January, 1909, were you engaged in the theatrical business? A. Conducting theatres? Yes, sir.

Q. How many theatres were you conducting in January, 1909? A. In January, 1909—I do not recall. It would be between 7 and 10, I should think. I don't remember the exact number.

Q. How many were you conducting in February, 1909? A. Well, at least that number.

Q. In January, 1909, did you have any theatrical companies on the road?

2 Mr. GROSVENOR: I object to that as improper cross examination. It is going into new matter not covered by the direct examination, and therefore, not properly asked.

The Witness: Yes, sir.

Mr. WILLIS: Go on, Mr. Witness.

A. I had a theatrical company on the road.

3 Q. One or more? A. I had one theatrical company, and quite a number of traveling moving picture shows that sometimes would work only Sundays, and other times would work one day in each town.

Q. Was your theatrical business as you have described it, profitable? A. Very much so, yes, sir.

Q. Did the revenue from that source enter into the revenue from all the other business enterprises that you were engaged in? A. Yes, sir, with the exception of the theatrical traveling receipts. The one theatrical traveling show.

4 Q. That was kept separate? A. In order that we shall distinguish what that is, I shall name that. That is "Thurston, the Magician," formerly known as "Keller."

Q. Do I understand you that this revenue which you derived from your theatrical business, with the exception of this traveling company, was included in your gross revenue that you made at that period? A. The receipts from theatres which you no doubt refer to as theatrical, but which were purely and simply moving picture theatres, entered into the gross receipts of that business; yes, sir.

Q. The gross receipts that you have been talking about in chief, I mean, and in cross examination? A. Yes, sir. 1

Q. And as I understand, you were quite unable to separate the various sources of that gross amount of receipts?

A. I was not unable. I am at this time, yes, sir. I could not tell you from memory.

Q. You were not able the other day, were you? A. Not from memory; no, sir.

Q. And you are not able to-day, from memory, are you? A. Certainly not, no, sir.

Q. As I understand you, you employed various systems of bookkeeping, but were unable to succeed in being able to separate them? A. I employed various systems of bookkeeping. It has been my experience that every time a new bookkeeper comes in, he wants to change the books and put in his own system, and for that reason, we had difficulties right along keeping various departments segregated in the proper manner. I do not mean to infer, however, that there were any of my bookkeepers not honest, or anything of that character. 2

Q. Only confusing? A. Only confusing, yes, sir.

Q. Now, Mr. Swanson, you testified about having a fire in Omaha. What was destroyed with reference to your moving picture business there? A. I did not go there. I was here in New York attending the Film Service Association convention, and received a telegram that my Omaha office was wiped out. 3

Q. Did you have any insurance on it? A. No, sir; I did not. You cannot get insurance on that sort of business.

Q. And that occurred on the 9th of January? A. To the best of my recollection. The 9th or 10th. It was during the convention here, I know.

Q. What was your loss there, Mr. Swanson? A. Well, everything was lost with the exception of one desk. 4

Q. I mean in amount involved—dollars and cents. A. It is hard to say, Mr. Willis, for the reason that I do not think that anyone in the moving picture business has ever been able to tell to their own satisfaction, or to the satisfaction of any other persons, and determine as to whether old film or film of any character, has any valuation. If they had a valuation, it must be determined upon by the individual running the business, and in those days, film exchange men as a rule did not depreciate their film. They

1 entered it as an asset at cost, and taking it at the cost, of course, the loss would be enormous, but taking the film at the actual value of it, it perhaps would not amount to a great deal. I have since established a rule that the very day that I buy a reel of film that costs \$100, I depreciate it 85 per cent., immediately—so, on that basis, my loss by the fire would have been maybe in the neighborhood of twenty or twenty-five thousand dollars, or thirty thousand dollars.

2 Q. Up to the time that you ceased to be a licensed exchange of the Patents Company, you were carrying all of your film upon your books at its original cost? A. Up until the time—no, I cannot identify just the exact time either in connection with other circumstances as to when we began to realize that there should be a definite method of distribution on the books, but it was either about that time or later.

Q. At the time of the fire, were you carrying the film at the Omaha office on your books at its original cost? A. My last answer was an effort to explain that I did not know.

3 Q. You are unable to say now what your loss was at that fire? A. Why, Mr. Raver, the manager, wired me that the loss was somewhere in the neighborhood of \$150,000 to \$200,000, and other than what he said, I don't know.

Q. Did that include the film at its original cost? A. I presume it was on the basis of its original cost. Surely.

Q. Of course, when your Omaha office burned out as you have described, that office was unable to supply the customers which it had, with film— A. (Interrupting): Oh, yes.

4 Q. (Continuing): Until it was re-established? A. It never lost a customer nor it never lost a day's business on that account.

Q. It did not? A. They got in touch with the Chicago and St. Louis offices, and they, by the very first train, sent them a sufficient quantity of film to continue on with their business.

Q. So there was no interruption in the business of your customers? A. Insofar as it was possible to continue it. Of course, for a time, they had to do all their business from memory, inasmuch as their records were all burned.



Q. There was one office that you discontinued? A. 1  
That was in Kansas City.

Q. That is not one of these four? A. No, sir.

Q. Now, let us get to the New Orleans office. You dis-  
posed of that, didn't you? A. No. I locked the door  
and walked away from it.

Q. Why did you do that, and when? A. I don't recall.  
I gave the key of the office and the contents to Mr. Fich-  
tenberg of New Orleans. I don't recall the time.

Q. Was that before January, 1909, or afterwards? A.  
I don't remember.

Q. As I understand, you testified in the Chicago Film 2  
case—

Mr. WILLIS (Turning to Mr. Grosvenor): I am  
now alluding, Mr. Grosvenor, from page 121, to  
his answer in answer to the 216th cross question—I  
will read the question and answer: "Just give the  
date, January, 1909. A. 1909. The New Orleans  
office, the man that I had in charge of that office,  
locked it up and ran away with everything in it,  
some time in the Summer of 1908. I afterwards  
sold the desk and typewriting machines, and so 3  
forth, to Mr. Fichtenberg, of New Orleans."

By Mr. WILLIS:

Q. Is that correct? A. Yes, sir, except that the sale  
was a gift. It was referred to as a sale to make his  
possession legal. I do not recall ever getting anything  
from Mr. Fichtenberg.

Q. You stated here that this sale was made in the  
Summer of 1908. That is correct, isn't it? A. If I stated  
so there, it very likely is.

Q. Mr. Witness, I wish you to read the answer to the 4  
216th cross question at the bottom of the page. That is all  
I am asking you to read.

The Witness: That statement is very likely correct.  
I believe it to be correct.

By Mr. WILLIS:

Q. You swore to it, didn't you? A. I did there, I pre-  
sume, yes, sir.

1      Q. You have no reason to change it now?    A. Not at all.

Q. What became of the film that you had in the New Orleans office when you sold the desk and typewriter?

A. I gave them to Mr. Fichtenberg.

Q. What did he do? Continue the exchange?    A. Continued the business. He is there yet. Still doing business. The office was closed up for a period of time. I do not recall just how long. I stayed there some considerable time.

2      Q. What I want to know from you, if I can get it, is when you ceased to have anything to do with this New Orleans exchange? After having read what you said there in the Chicago film case, are you able to answer the question?    A. I would say that that statement in that case is about correct, so far as I know. 1908—yes, sir—or early in 1909. In this sense, that I quit renting films after Mr. Kelly got the money and other valuables there and ran away with it.

3      Q. That was in the Summer of 1908?    A. That was in the Summer of 1908. Then I was unable to get away to Chicago, owing to the fact of the organizing of this Film Service Association at that time, and later on the office closed up for quite a while. I cannot say just how long. Six or eight or nine weeks, and then I went to New Orleans and I stayed there for a period of about two months or six weeks, trying to get things re-established.

4      Q. You were not running it then, were you?    A. No, but my expenses were going on just the same. Mr. Kelly had made some contracts with people before he left, giving them some advantages of employment, and I had to pay their salaries and pay rent on the place just the same. That was located in a place called Union—they have got a peculiar method there of making their streets, I think they call them alleys. Narrow streets that do not permit of wagons going through, although they are used by pedestrians; they call those alleys. That was some alley. I have forgotten the location of it, but that office is now operated as the Swanson-Dixie Film Company, and is located in the Maison-Blanche Building. It is not the same location at all.

Q. Was it upon the occasion of this visit that you have

just described, that you gave the desk and typewriters to Mr. Fichtenberg? A. That occurred one evening in a bantering spirit. I said, "Just give me one dollar or five dollars, and I will give you the whole business." 1

Q. That was at the time of the visit that you have just described? A. Yes, sir.

Q. It could not have been a very profitable business down there if you gave it away? A. It surely was, but I had not any partners or any other way of protecting myself, and I was alone in the business, and I could not cover so much territory. I had too many irons in the fire. It certainly was a profitable business. It was nearly all profit. 2

Q. Could not you have sold it? A. Well, I don't know. I did not try to sell it.

Q. Just gave it away? A. Yes, sir.

Q. In a spirit of gratitude? A. Not a spirit of gratitude. No, sir. I had nothing to be grateful for.

Q. Well, a spirit of liberality, I mean? A. That is better.

Q. If I were to tell you that Mr. Fichtenberg wrote a letter to the Patents Company in March, 1909, that you were not connected with the exchange any more, would that assist you in fixing the date when you made this magnanimous gift to Mr. Fichtenberg? A. Well, it would not fix anything. It would just simply prove Mr. Fichtenberg trying to clear his skirts of any connection with me, thinking it would have an ill effect on his business in New Orleans, after the Patents Company had cancelled me in Chicago, Omaha and St. Louis—it is a misstatement of the facts on his part, however, for the reason that I was at that time Vice-President of the company. He has not told the truth when he wrote that letter, although my interest was nothing but one share of stock. 3 4

Q. Then when you gave it away, you had not any interest in it at all? A. Just the one share in order to hold the corporate name for him. It was an Illinois corporation.

Q. Now, Mr. Swanson, take the months of November and December, when your gross receipts were so enormous. That is, enormous from my point of view.

Mr. GROSVENOR: In the year 1908?

Mr. WILLIS: In the year 1908.



1 By Mr. WILLIS:

Q. What did you do with that money? I don't mean to say what you invested it in. Did you deposit it in banks? A. Some deposited in banks. Some placed in safe deposit boxes.

Q. Safe deposit boxes? A. Yes, sir.

Q. Well, would you keep a bank account in each of these separate places where you had exchanges? A. Sometimes more than one. Sometimes as many as three and four.

2 Q. Now, I want you to tell me the name of the bank in which the St. Louis gross receipts were deposited, the banks, bank or trust companies. I want you to give me the names of the banks, bank or trust companies, that the gross receipts that Omaha exchange receipts were deposited in. I want you to give me the names of the bank, banks or trust companies in which the New Orleans gross receipts were deposited in, and I want you to give me the name of the bank, banks or trust companies in which the gross receipts of William H. Swanson & Company of Chicago were deposited. Will you do that? A.

3 I will do so to the best of my ability. I do not know as I can give you the accurate list.

Q. When will you be able to do that? A. I cannot do it any better at any other time than I can right now.

Q. Will you give it to me, then? A. Without going into investigation, which will take considerable time, I could not give it to you, however, accurately. I will have to take other peoples' word for it. I would not know if they told me other peoples' names, whether they were correct or not.

4 Mr. GROSVENOR: The witness having stated he was willing to give the names now, to the best of his recollection, I would suggest to counsel that he ask for the names if he cares for them, and I also instruct the witness that there is no duty upon him to go and make a search at some later time for the names, for the benefit of counsel for the defendants, this cross examination being unduly protracted and relating to none of the issues in the case. That is, what the private personal bank ac-

counts of the witness were, and where they were had. 1

Mr. WILLIS: Well, we will see about that.

By Mr. WILLIS:

Q. Now, give me the name of the bank, banks or trust companies in which the money, gross receipts of the St. Louis place was deposited. A. You have picked out the hardest one first.

Q. Because it is the first one on my list. That is the only reason. A. In giving the names of banks now, I may not remember whether they are state banks or national banks, but their descriptive name will identify them. One in St. Louis was the Republic. Whether it was the Republic National or Republic something other than that, I don't recall. 2

Q. Mr. Swanson, by way of parenthesis, I am referring now to the months of November and December, 1908. A. Oh, that I could not give you. I don't know. I don't know those months. The best that I could do from memory would be to give you a list of banks in the various places where I had done business at different times. 3

Q. My question had reference to the months I named. A. I had overlooked that, Mr. Willis. I did not realize that.

Q. Notwithstanding the gratuitous instruction from the attorney— A. (Interrupting): I believe, Mr. Willis, I understood that without the suggestion.

Q. One moment. (Continuing): From the attorney for the Government. I will ask you whether you are willing to give me the names of the banks in which the money referred to, the gross receipts, were deposited in the months of November and December, 1908? A. For reasons of future litigation that might make those of value to me, and also of value to others, I prefer keeping them if I can. 4

Q. Then you decline to give me the names of the banks? A. On that ground, yes, sir.

Q. Mr. Swanson, how many reels were you purchasing during the month of December, 1908, for all of the exchanges then operated or controlled by you? A. That would be impossible for me to answer from memory.

1      Q. All that you did purchase or lease during the month of December were from one or more of the manufacturers licensed by the Edison Manufacturing Company? A. I don't recall having leased any in the month of December at all.

Q. Did you buy any? A. Oh, yes, sir. Unquestionably.

Q. And only from those licensees? A. That is all.

2      Q. How many customers would one reel serve during a week? A. I want to get, if I can, the relative percentage of the customers to a given quantity of reels. A. That, Mr. Willis, no one has ever been able to determine, and the reasons or the conditions are so different in every individual case where film exchanges are located or parties film is rented to, or the requirements of the place. Some men want to rent a reel for one week, some for one day, some for two days.

Q. I am not asking you with reference to any general custom. I am asking you with reference to the conduct of your own business. Isn't it a fair estimate to say that one reel will serve four customers? A. In one week?

3      Q. Yes? A. No. It would not with me, because my business was mostly a mail order business. It was altogether different from the way it is in New York, where they hand it out over the counter.

Q. Suppose you had a hundred customers a week, how many reels would you have to have? A. Oh, I have had a hundred and two hundred customers, and not buy any reels.

Q. I want to get this. How many reels would be necessary to supply a hundred customers? A. Well, I found that it requires about three thousand.

4      Q. To supply— A. (Interrupting): One hundred customers, yes, sir.

Q. Isn't it a fact that you could run your business and supply the demand of a hundred customers a week with four reels? A. Four reels of film?

Q. Yes? A. Certainly not. How are you going to distribute four reels of film among a hundred customers?

Q. What I mean is, that the average is four for each reel? A. I am afraid if you divided a reel into four pieces and sent a portion to each customer, you would soon lose your customers.



Q. Either I don't make myself understood, or you don't understand the question. I believe you stated in your testimony in chief you bought as high as ten, fifteen or twenty thousand dollars' worth of reels at a time? A. Yes, sir, during the course of a week. 1

Q. What week did you buy \$20,000 worth of reels? A. I don't know.

Q. From whom did you buy it? A. From various makers of film.

Q. They were all licensed manufacturers? A. Oh, no, certainly not.

Q. What period of time are you referring to now? A. Sir? 2

Q. What period of time are you referring to, when you bought \$20,000. A. At some time during the period between 1907 and 1909.

Q. Was it bought at auction? A. Certainly not.

Q. Why did you buy \$20,000 worth of reels at a time? A. Why, we did not have films shipped then with any idea of a release day, for the simple reason that at the time I am referring to, there was no such thing as first-run customers, or second-run customers, or third-run customers. You were paid for your film service according to the condition that you kept your film in, and its cleanliness on the curtain, and its novelty—whereas later on the manufacturers through their persistent advertising of release dates, educated the exhibitors into a desire on the exhibitors' part to get the films the day that the manufacturer was releasing it. The very first day. In order to beat a competitor to it. They would advertise that as an advantage over their competitors. The exhibitors, I am referring to. Therefore, in buying film—I usually bought film on Saturday. I would go over to the Pathe office, and I have seen five or six of us men scramble—actually—into fist fights for the privilege of buying the films, never look at it, sweep it up from the shelf onto the floor, and gather it up and say, "How much?" And over to the Vitagraph, the same way, and the Selig office, the same way. And the bills would be presented. It was simply a case of how much you could sweep off the shelf and not have the other fellow grab it on you. It was simply a wild scramble, and it was that way for a long, long time. 3 4

1 Q. And that was prior to 1908, wasn't it? A. Well, I would not say prior to 1908. That condition was in 1908 also.

Q. How late in 1908? A. Well, up until about the organization of the Film Service Association.

Q. When was that? A. The organization was effected some time in 1908.

Q. Well, when? A. I cannot state the date.

Q. You wrote the by-laws, didn't you? A. Oh, that covered a period of six months before its real organization.

2 Q. Can't you tell when it was organized? You were President of it, for a time? A. I cannot fix dates as readily, owing to the fact that my different businesses called me all over the United States, and therefore I cannot fix dates like a man that does not go all around very often. That would be the only way that I could identify the period of time; it was by the fact that I happened to be in a certain city at a certain time, and that I cannot remember.

3 Q. You were very actively engaged in your own business and liable to forget? A. I consider myself a very busy man, Mr. Willis, and always have been, and I try to forget as many small trifles, the details, as possible, in order that I may retain more important ones.

Q. And you are quite successful in forgetting, I suppose? A. Not necessarily. I am very successful in forgetting trifles.

Mr. GROSVENOR: I can give the date if counsel wants it. It was about February, 1908.

Mr. WILLIS: I think I have it. I am very much obliged to you.

4 Mr. GROSVENOR: Did you require it for testing the memory of the witness? I did not mean to interrupt you. I did not think you were testing the memory of the witness.

Mr. WILLIS: The witness could not recollect.

A. I was trying to give Mr. Willis an answer as to the elimination of that condition. That did not necessarily mean that just the meeting and formation of the Film Service Association rectified that. The rectification of that did not occur until these Edison licenses were signed, and as to what

that date was, I have no recollection. It is all a matter of record, however. 1

Q. Are you a member of the Republican Club in New York? A. No, sir.

Q. I believe you testified that you stayed with Mr. Spoor and Mr. Selig and Mr. Kleine a couple of nights there? A. I was there at the invitation of Mr. Kleine, who, I believe, was a member, as he about that time, or later gave me a card of introduction to the club.

Q. Yes. That is right. You stated you all three slept in the same room? A. That was a slight mistake. Mr. Kleine did not sleep in that room, but Mr. Spoor and Mr. Selig did. 2  
Mr. Spoor later on retired to another room, of his own, or with Mr. Kleine. Mr. Selig remained with me all the time that Mr. Selig was at the Republican Club with me.

Q. Now, isn't it a fact that Mr. Spoor met you in New York, and invited you to come over, and took you over to the Republican Club and got you a room in the back part of the building by yourself? A. Mr. Spoor did not take me over at all.

Q. Mr. Kleine? A. No, it was not necessary. I was registered and had been for some considerable time at the Imperial Hotel. He did not need to do me any favor in doing so. They did it for their own purposes. My room rent went on just the same at the hotel where I was stopping. 3

Q. It was not a question of economy. Didn't he give you a room over at the Republican Club? A. No. When I got so worn out, and after they had accomplished their purposes in securing a promise from me, after loading up on a great deal of wine I laid down some place. I don't know where it was. I don't believe either one of the other gentlemen remembered what room they slept in either.

Q. Didn't you continue your Chicago Exchange after your license had been cancelled by the Patents Company? A. Yes, indeed. I tried to continue it and succeeded for a time. 4

Q. And continued your theatrical business, as you have described it? A. No, I had to sell those out.

Q. What did you sell out? A. The theatres.

Q. Bought them back again? A. No, sir.

Q. I thought you said you were operating them now? A. I said I am operating some theatres in the West. West of the Mississippi. Chicago is this side of the Mississippi River.

Q. I am afraid you do not understand my question. You



1 continued your Chicago Film Exchange after your license had been cancelled? A. Yes, sir, as a junk shop.

Q. Didn't you operate it as a picture distributing establishment? A. Well, insofar as it was possible, among customers who were willing to take what we call or term "junk." This old second-hand stuff. Without any renewal of supply, you cannot succeed with a film exchange. It is a junk shop.

Q. Were not you getting renewals? A. Not for some considerable time. At least, I never got any new film of any character, and then not a great deal, only six reels, until the twenty-sixth of March.

2 Q. Well, your license was revoked on the 15th of March? A. The license was figuratively revoked on the 15th of March, but it was practically revoked and the supply cut off, the moment I received the telegram, and I was over a month without new film, and being without new film for a day would put a film exchange to serious inconvenience, and being without new film for a week would put him out of business.

Q. Well, did you continue to operate your theatres, west of the Mississippi River? A. No, sir, I have acquired those in the past year. Or a year and a half, perhaps.

3 Q. You say there was an interruption in your business of the Chicago Film Exchange after the cancellation of your license. An interruption in business? A. Yes.

Q. And that continued until about the 18th of March? A. The 27th of March. The International Projecting & Producing Company then released their first foreign importations.

Q. Were you a member of that firm? A. The International? Of that firm?

Q. If it is a firm, yes. A. No, I had no connection with it except to buy their goods. They were a corporation.

4 Q. Where were they located? A. They were located in the Schiller Building.

Q. In Chicago? A. Yes, in Chicago.

Q. Mr. Swanson, do you remember inserting an advertisement in the Moving Picture World in the issue of March 13th, 1909? A. I was continuously advertising about that time. I do not recall any particular "ad."

Q. I will read the advertisement that occurs in that issue, on page 320 and ask you whether or not it is published with your authority.

(Reading.) Headed, "Film Renters: We wish to an-

nounce to you that from this day, all Swanson offices will be pleased to rent you films, no matter whether or not you have paid the machine license required by the Patents Company, and their licensees. Because of the interest Mr. Swanson has personally taken in existing conditions of the Moving Picture business, and the strong opposition he has made against compelling of payment by the exhibitors of the \$2.00 weekly royalty imposed by the Patents Company, and his interest and loyalty to the customer, together with his refusal to advise them to take a step which he did not believe was for their well being, will, we believe, lead to our becoming independent. Mr. Swanson has considered the question most carefully, and has investigated very thoroughly the source of supply of film for the Independent Exchanges and he believes that the subjects which are to be placed on the market by the International Projecting and Producing Company are unequalled not only in subject matter, but also in photography, and will be the choicest productions of the European manufacturers. We ask that all exhibitors who are interested in securing the highest class of film service, write us to-day for full particulars.

(Signed) William H. Swanson & Co.,  
 Nos. 160, 162, 164 Lake St.,  
 Chicago, Ill.  
 W. H. Swanson St. Louis Film Co.,  
 200, 201, 204 No. 7th St.,  
 St. Louis, Missouri.  
 William H. Swanson Film Company,  
 No. 106 South 14th St., Omaha, Neb."

Is that your advertisement? A. What is the date of that?

Q. It is in the issue of the Moving Picture World of the 13th of March, 1909?

A. I think that was an "ad" inserted by our Advertising Department, and censored by the editor of the Moving Picture World. That "ad" was written and put in there after the cancellation of the license.

Q. From this advertisement there does not seem to have been any difficulty in getting plenty of film? A. The advertisement does not say that at all. There would be no difficulty in getting it?

Q. Well, there was plenty to be had, wasn't there? A.

1 It was an impossibility to get even one inch in the entire United States at one time. Money would not have bought it. It did not exist.

Q. Do you know of the Great Northern Film Company?

A. Oh, yes.

Q. Were they selling film at that time? A. No, sir.

Q. Are you sure of that? A. Not to me.

Q. Were they selling it in the market? A. Oh, I don't know anything about their business. I know there was such a concern as that.

2 Q. You never tried to get it from them, did you? A. Yes

Q. When? A. About that period of time.

Q. Well, did you get it? A. No.

Q. Why? A. They said they wanted to work in harmony with the International, and they would not release theirs until the International released theirs also.

Q. They were tied up with the International? A. Well, they were not—I presume—I have not anything but just an opinion. I don't know.

Q. And then you went to the International for film. When? A. They made a delivery of about three or four reels or perhaps subjects. However, nothing like the necessary  
3 quantity, on the 27th, I believe, of March.

Q. Did you know the International Projecting and Producing Company? A. Did I know them?

Q. Yes. A. I knew that company, yes, sir.

Q. Where was it located? A. In the Schiller Building, Chicago.

Mr. GROSVENOR: Is this the same International in respect to which you have just asked several questions?

4 Mr. WILLIS: No, it is not the International—

Mr. GROSVENOR (Interrupting): Well, you have been talking about it as the International.

Mr. WILLIS: Yes, it is the same one.

Mr. GROSVENOR: The witness has been referring to the same one.

Q. Well, did you finally make arrangements with the International to get the film? A. Yes, sir, at the same time that I tried to make arrangements there, I tried to make arrangements with the Great Northern, and he said he had



a license agreement with the Biograph Company under their license, and he did not as yet want to jeopardize that license by selling to cancellations of the Patents Company. 1

Q. That was what company? The Great Northern? A. The Great Northern. He showed me that license that he had from the—

Q. (Interrupting): What was the date of that license? A. I believe it was 1907. Or 1908. One or the other.

Q. Were you not buying film from Kleine? A. Wasn't I buying film from Kleine?

Q. Yes.

2

Mr. GROSVENOR: When?

Mr. WILLIS: In February, 1909?

A. Oh, no.

Q. Did you buy foreign produced films, imported films, from anyone during February and March of 1909? A. I bought imported films.

Q. From whom did you buy it? A. In the latter part of March. From the International Producing & Projecting Company or Projecting & Producing Company. I don't recall how they described themselves. 3

Q. What makes were they? A. It is painful memory. I don't know. They were attempted makes. The brands of them, I do not recall, except in one or two instances. They were Itala, and Hepwix, Meister—

Q. Are you trying to enumerate them? A. I have mentioned two or three.

Q. Can you recollect of any others? A. Well, I was familiar with nearly all of those names. In fact, all of them, but I do not recall them now. They did not have sufficient importance in the moving picture world to impress their names on the memory of any one as very well known. 4

Q. I will ask you to look at the list of the imported film as set forth in that advertisement of the International Projecting & Producing Company on page 220 of the Moving Picture World, Vol. IV, under date of February 20th, 1909? A. I recall that is an advertised list that the International published.

Q. Will you kindly let the stenographer copy the names

- 1 of those imported films which you have identified? Just hand it to him, and let him take the names from the book.

Mr. GROSVENOR: He has identified it as an advertisement—

The Witness (Interrupting): I recognize it as an “ad” that was published.

Mr. WILLIS: I am going to go a little further than that.

- 2 The list referred to is as follows:

Ambrosio,	Wrench,
Pineschi,	Chicks & Martin,
Eclair,	Walturdaw,
Deutsche Bisokop,	Stella,
Clarendon,	Warwick Trading Co.,
Williamson,	Lux,
Raleigh & Roberts,	Messteh Deutsche,
Aquila,	Hepworth,
Itala,	Robert Paul,
3 Theo. Pathe,	Comerio.

Q. Are not these foreign films which you have identified in this advertisement, the same ones that Kleine was dealing in before he became a licensee of the Patents Company? A. Just a very few of them. Not all, by any means.

Q. Will you kindly designate those for which he was the representative and sales agent? A. I could not say everything that he was representative and sales agent for. I can point out some that I am familiar with, from having purchased them.

- 4 Q. Point out those that you are familiar with. A. Raleigh & Roberts, Itala, and Ambrosio, Warwick Trading Company and perhaps others. But that is more strong in my memory than any others. The International Company did not get those brands. Some of them.

Q. Will you kindly explain your last remark? I cannot fully understand it. A. I should not have made the remark. I had not been asked regarding that. I volunteered the remark that there was some of those brands there that

that Company advertised, and they advertised simply from the fact that they had selected some samples, but they did not have any goods to deliver for customers or exchanges. There were quite a number of those ones. I mean the International never had them. 1

Q. Notwithstanding their advertisement said they did have them, you say they did not at that time? A. I found—my experience with the International Company, through their ignorance of the moving picture business and their credulity, that they were sadly imposed upon, and many of their mistakes were not intentional, but purely and entirely through ignorance of the moving picture business, and they thought that all samples submitted would be purchased by buyers, and they thought that buyers bought film simply for the love of buying. They found it unprofitable to order some of these brands, for the simple reason that the buyers after looking at the sample, would not take them for a gift. That is why they never handled them. 2

Q. Were those some of the ones that Kleine had been selling? A. No, I would not put that number that I mentioned as having been in the agency of Mr. Kleine, in that category. They were reasonably good film, for European film, which has never been very popular in America with but one exception. 3

Q. Mr. Swanson, there was one question yesterday I failed to ask you. How many weeks was it your gross receipts were \$20,000? A. I don't know.

Q. What? A. I don't know. I know that the years 1907 and 1908 I made an awful lot of money. I made more than that amount of money.

Q. Mr. Swanson, I just want to see whether or not you desire to correct a matter that is in the testimony on page 510, folio No. 4. It runs over on the page. I have asked you the question, you will observe there, at the bottom of page 510: "Are there any manufacturers' names on Bulletin No. 20?" And your answer is, "It was not gotten out for the purpose of showing a list of members. Q. Will you answer my question? A. No." Now, I do not know whether that is that you say, "No," you won't answer my question? A. Yes, sir; it is ambiguous. What does Bulletin No. 20 refer to? 4



1           Mr. GROSVENOR: That was the list of members of all the rental exchanges. It contained the rental exchange membership.

2           Mr. WILLIS: You will recognize it from what I say. (Reading): "I show you another Bulletin of the Film Service Association dated August 20th, 1908, and ask you to look at it, and state whether or not the language used thereon is as follows: 'The following is a complete list of all authorized memberships, and the addresses to which film may be shipped.'" That is the end of the quotation. I ask you whether that language is correct. The bulletin contained the names of members.

3           A. Yes, I recall that Bulletin there distinctly. It gave a complete list of all the Film Service Association Film Exchanges, and it was a clerical error on the part of the Secretary just simply taking it for granted that the exchanges were only interested in knowing each other's addresses. It did not refer to the fact—it did not include the manufacturers, for the reason that it stipulated on that Bulletin, "Members to whom films might be shipped," showing on its face that it was for the benefit of the manufacturers to notify them whom they, as associate members, could ship film to.

Q. Are you still positive that manufacturers were members of that Association? A. I am more positive of that than I am that I am married to my wife.

Q. Is your memory as clear on that as it is as to whatever else you have testified in this case? A. More so.

4           At this point the examination of the witness is suspended by consent.

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Thereupon WILLIAM PELZER, resumed the stand.

Direct examination (continued) by Mr. GROSVENOR:

Q. Mr. Pelzer, have you produced some statements and papers in response to the requests of yesterday and preceding days? A. I have produced the exchange license agreement

granted to the Kinetograph Company for the office at 71 West 23rd Street, New York City. A similar license was granted by the Motion Picture Patents Company for the office located at 67 Walton Street, Atlanta, Georgia, the latter license being dated January 15th, 1913. 1

Q. These papers you produce in your capacity as Secretary of the Patents Company? A. Yes, sir. You also asked me to produce any other agreements between the Patents Company and the Eastman Company. I have been unable to find any other—

Q. (Interrupting): Than the four mentioned yesterday, you mean? A. I have been unable to find any others than those already produced by me. You also asked for an agreement between the General Film Company and the Kinetograph Company. There is no such agreement. 2

Q. What else have you? Is that all you have as officer of the Patents Company? A. Yes, sir.

Q. Now, changing yourself so as to become an officer of the General Film Company, what have you produced? A. I have produced a statement from the General Film Company of the undivided net profits credited after payment of dividends on preferred and common stock, from the beginning of the business up to December 30th, 1911, which is in addition to the statement produced, and embodies the detailed payments as requested. 3

Q. What else have you? A. I also produced a statement of the General Film Company showing how this amount of undivided profits was credited, according to the footage of film supplied by the various exhibitors.

Q. Have you anything else? A. You also asked for a statement of the amounts paid under the instalment contracts. That statement is being prepared. It is quite a lengthy job. You also asked for the production of the books showing the summary of the reports of the branch offices. These books are not produced in accordance with instructions from counsel, for the reason that counsel wish to examine them and counsel with officers of the Company before doing so. 4

Q. Now, have you anything else? A. No, sir.

Adjournment until 2.30 P. M., same place.

1 New York City, January 24, 1913.

The hearing was resumed pursuant to adjournment at 2.30 o'clock P. M., on this January 24th, 1913, at Hotel McAlpin.

Thereupon WILLIAM PELZER resumed the stand.

Direct examination (continued) by Mr. GROSVENOR:

2 Q. Mr. Pelzer, I show you what purports to be a list of the stockholders of the General Film Company heretofore prepared by you, I believe. Can you identify that as a list of the preferred stockholders as of any particular date? A. This looks like a list prepared by Mr. J. J. Kennedy and is probably a list that was sent to the clerk of the company, in Portland, Maine, for the annual meeting in 1912.

Q. I will offer that in evidence at the present time, and will later have it brought down to date as of January, 1913. A. I can furnish you with a copy that will be made up to date.

3 Q. Up to January 1st, 1913? A. Yes, sir, I will bring you one. You want the list for January 1st, 1913?

Q. Yes. A. Yes, sir.

Q. Will you please subsequently produce that, and then we will compare it with this one marked Defendants' Exhibit No. 128? A. Yes.

Mr. GROSVENOR: I offer in evidence a list of the preferred stockholders for 1912, as Petitioner's Exhibit No. 128.



**Petitioner's Exhibit No. 128.**

1

LIST OF PREFERRED STOCKHOLDERS OF THE  
GENERAL FILM COMPANY.

Residence and P. O. Address.	Shares	
Actograph Company, Germania Life Insurance Bldg., 50 Union Square, New York City, N. Y. ....	250.	
Albaugh, H. W., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri. ....	1.875	2
Amalgamated Film Exchange, 1421½ Fourth Street, Portland, Oregon. ....	350.	
American Vitagraph Company, 116 Nassau Street, New York City, N. Y. ....	130.	
Baldwin, F. A., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri. ....	.9375	
Berst, J. A., 251 West 81st Street, New York City, N. Y. ....	1.	
Best, Rudolph, c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri. ....	12.4987	3
Birmingham Film Supply Company, 2008½ Third Avenue, Birmingham, Alabama. ....	40.	
Brandimore, J. H., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri. ....	.75	
Buffalo Film Exchange, 272 Washington Street, Buffalo, N. Y. ....	60.	
Buiswanger, Sam, c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas, Missouri. ....	1.875	
Buiswanger, Simon, c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri. ....	1.875	
Burr, Henry, c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri. ....	9.5137	4
Calehuff, Charles A., 50 North 8th Street, Philadelphia, Penna. ....	200.	
Calumet Film Exchange, 1609 Masonic Temple, Chicago, Illinois. ....	100.	
Clark, James B. and Rowland, Richard A., c/o Pittsburg Calcium Light & Film Company, 906 Peoples Bank Bldg., Pittsburg, Pa. ....	180.	

1	Residence and P. O. Address.	Shares
	Clune, William Henry, 727 South Main Street, Los Angeles, Cal. ....	200.
	Conflans, H. E., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City Missouri.....	.9375
	Cooper, A. L., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	.375
	Davidson, J., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875
	Denver Film Exchange Corporation, The, 713 Lincoln Street, Denver, Colorado.....	90.
2	Dix, E. E., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	20.5088
	Dyer, Frank L., Head of Parkhurst Place, Mont- clair, New Jersey.....	1.
	Edwards, C. S., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	3.75
	Edwards, Jr., C. S., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	.375
	Electric Theatre Supply Co., Inc., 44 North 10th Street, Philadelphia, Pa.....	160.
3	Epley, Mrs. C. A., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas, Missouri.....	1.875
	Fenton, Ernest Albert, c/o Mr. Percival L. Waters, 200 Fifth Avenue, New York City, N. Y. ....	368.
	Flintom, A. D., 7th & Main Streets, Kansas City, Missouri .....	86.4863
	Florence Film Company, 18 East Third South, Salt Lake City, Utah.....	89.
	Gardiner, C. H., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	7.5
4	Gilligham, Albert J., 69-71 Griswold Street, De- troit, Michigan .....	100.
	Green, T. C., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	4.7625
	Harris, John W., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	19.7437
	Hodkinson, W. W., 420 Turk Street, San Fran- cisco, Cal. ....	50.

Residence and P. O. Address.	Shares	
Hoefer, S., c/o Mr. A. D. Flintom, 7th & Main Street, Kansas City, Missouri.....	1.875	1
Howard Moving Picture Company, 564 Washington Street, Boston, Mass.....	320.	
Jacob, Helen G., c/o Mr. A. C. Springer, 2301 Green Street, San Francisco, Cal.....	76.2/3	
Kennedy, Jeremiah J., 529 Second Street, Brooklyn, New York.....	101.	
Kent Film Service Company, The, Nicholas Building, Toledo, Ohio.....	80.	2
Kirtley, C. A., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875	
Kleine, George, 2716 Hampden Court, Chicago, Illinois .....	937.	3
Lafeyth, A. B., c/o Mr. A. D. Flintom, 7th & Main, Streets, Kansas City, Missouri.....	.75	
Libeau, R. C., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875	
Lieber Company, The H., 24 West Washington Street, Indianapolis, Indiana.....	150.	
Long, Samuel, 1014 Hudson Street, Hoboken, New Jersey .....	1.	
Lubin, Annie, c/o Mr. Siegmund Lubin, 20th st. & Indiana Ave., Philadelphia, Pa.....	184.	
Lubin, Siegmund, 1608 North 15th Street, Philadelphia, Pa. ....	1.	
Lyons, D., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	3.75	
Magnetic Film Service Company, The, 123 Shillito Place, Cincinnati, Ohio.....	80.	4
McDonald, C. B., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	32.43	
Melchior, Jacob Willis, 628 Olive Avenue, Redlands, Cal.....	150.	
Melies, Gaston, 204 East 38th Street, New York City, N. Y.....	1.	
Mitchell, Louis, P. O. Box 583, Memphis, Tennessee .....	200.	



1	Residence and P. O. Address.	Shares
	Montana Film Exchange Co., The, Broadway & Main Streets, Butte, Montana.....	95.
	Moore, Fayette T., 434 Ninth Street, N. W., Washington, D. C. ....	42.
	Motion Picture Supply Company, c/o Genesee Valley Trust Co., Rochester, N. Y.....	50.
	Pearce & Scheck, Incorporated, 415 East Baltimore Street, Baltimore, Maryland.....	50.
	Peoples Film Exchange, 260 West 42nd Street, New York City, N. Y.....	140.
2	Pittsburg Calcium Light & Film Company, 906 Peoples Bank Bldg., Pittsburg, Pa.....	60.
	Pittsburg Calcium Light & Film Company, 906 Peoples Bank Bldg., Pittsburg, Pa.....	680.
	Roth, Adolph, c/o Mr. A. C. Springer, 2301 Green Street, San Francisco, Cal.....	76.2/3
	Rothschild, L. P., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	26.3775
	Rule, W. A., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	10.3125
3	Seagraves, W. T., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875
	Selig, W. N., 5356 Magnolia Avenue, Chicago, Illinois .....	1.
	Smith, Albert E., 1926 Albemarle Road, Brooklyn, N. Y. ....	1.
	Spokane Film Exchange Co., The, 120 Wall Street, Spokane, Washington.....	45.
	Spoor, George K., 908 Argyle Avenue, East Chicago, Illinois .....	124.
	Springer, Abraham C., 2301 Green Street, San Francisco, Cal. ....	76.2/3
4	Struble, C. D., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875
	Tally, Thomas L., 833 South Broadway, Los Angeles, Cal. ....	140.
	Taylor, H. C., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	30.1163
	Theater Film Service Co., 85 Dearborn Street, Chicago, Illinois .....	181.

Residence and P. O. Address.	Shares	1
Theatre Film Supply Company., 2104 First Avenue, Birmingham, Alabama.....	60.	
Toothaker, Solon, c/o Mr. A. D. Flintom, 7th & Main Street, Kansas City, Missouri.....	1.875	
Tucker, C. H., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	3.75	
Turner & Dahnken, c/o Empress Turkish Baths, 957 Market Street, San Francisco, Cal.....	250.	
United Film Exchange Company, The, c/o Dreamland Amusement Co., 703 Euclid Avenue, Cleveland, Ohio.....	60.	2
Van Duzee, Charles E., 709 South 5th Street, Minneapolis, Minnesota.....	100.	
Washington Trust Company of Pittsburg, Pa., 5th Ave. & Washington St., Pittsburg, Pa...	120.	
Waters, Percival L., 200 Fifth Avenue, New York City, N. Y.....	269.	
Weiss Film Exchange, Alfred, 219 Sixth Avenue, New York City, N. Y.....	100.	
Wheelan Film Company, J. D., 1807 Main Street, Dallas, Texas. ....	151.	3
Wolf, Dr. I. J., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875	
Wolf, Nathan, Trustee, c/o American Film Service, 77 South Clark Street, Chicago, Illinois.	135.	
Woolf, M., c/o Mr. A. D. Flintom, 7th & Main Streets, Kansas City, Missouri.....	1.875	

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By Mr. GROSVENOR:

Q. I show you what purports to be a list of the officers and directors of the General Film Company. Is that a correct list of the officers and directors as of January 1, 1912, of the General Film Company? A. I think so, yes, sir.

Q. Those were the directors during the year 1912? A. Not during the entire year. There have been several changes. Mr. Paul G. Melies, succeeded Gaston Melies,

1 and I was elected a director to fill the vacancy created by Mr. J. J. Kennedy, retiring from the Board, and Mr. Paul G. Melies was elected secretary; and Mr. J. J. Kennedy ceased to be the president, and Mr. Berst became president, and he has since retired, and Mr. Frank L. Dyer, succeeded him as president, but I succeeded Mr. Samuel Long as treasurer.

Q. With these corrections that is a correct list of the directors to date? A. Yes, sir.

2 Mr. GROSVENOR: I offer in evidence the paper entitled "Officers and Directors of the General Film Company on January 1, 1912," as Petitioner's Exhibit No. 129.

### **Petitioner's Exhibit No. 129.**

#### **LIST OF OFFICERS AND DIRECTORS GENERAL FILM COMPANY, JANUARY 1, 1912.**

3

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#### **OFFICERS.**

President,	J. J. Kennedy,
Vice President,	George Kleine,
Treasurer,	Samuel Long,
Secretary,	William Pelzer.

#### **DIRECTORS.**

4

Frank L. Dyer,  
J. A. Berst,  
Sigmund Lubin,  
Gaston Melies,  
Albert E. Smith,  
George K. Spoor,  
W. N. Selig,  
George Kleine,  
Samuel Long,  
J. J. Kennedy.



By Mr. GROSVENOR:

1

Q. In the record at pages 328 and 329, I asked you certain questions regarding that statement that appears in the minutes of October 11, 1910, which states the payment made for exchanges in October, 1910: "Stock \$591,400, Cash, \$1,483,200; total payments authorized for all exchanges in entire country, stock, \$988,800., cash \$2,480,000," at which time you had been unable to find any records of that authorization. Since I asked those questions of you have you obtained any further information? A. No, sir.

Q. Have you asked any other officers of the company about that than the persons mentioned on that page of the minutes since I asked you those questions? A. No, sir.

2

Mr. GROSVENOR: Referring to Exhibit 7, of the Petition, being the agreement between the Motion Picture Patents Company and the General Film Company, dated April 21, 1910, it is agreed by counsel that said copy attached to the petition is a copy of the agreement entered into between the companies named, on the date stated, April 21, 1910, and that it may be referred to in this record as

3

### **Petitioner's Exhibit No. 130.**

and need not be copied into the record, subject to correction.

Mr. CALDWELL: Yes.

Q. Mr. Pelzer, you have produced an exchange license agreement between the Motion Picture Patents Company and the Kinetograph Company, being a copy of a printed form, with the names filled in, is that the same exchange license agreement as is already in evidence, and which is attached to the petition as Exhibit 4, being what is known as the regular license exchange agreement entered into between the Motion Picture Patents Company and the rental exchanges? A. Yes, sir.

4

Mr. GROSVENOR: This exchange license agreement between the Motion Picture Patents Co., and the Kinetograph Company, of 71 West 23rd Street, is

1       dated December 28th, 1912, signed by George F. Scull, Vice-President, for the Motion Picture Patents Company, and by J. J. Kennedy, president of the Kineto-graph Company, and the witness having stated that this is identical with Exhibit 4, attached to the petition, the paper is returned to the witness and need not be copied into the record.

      I also offer in evidence as Petitioner's Exhibit No. 131, the statement entitled "Statement of Undivided Net Profits Credited After Payment of Dividends on Preferred and Common Stock, December 30, 1911."

2       I also offer in evidence as Petitioner's Exhibit No. 132, the statement entitled "Distribution of Undivided Net Profits for the years 1910 and 1911, Credited After Payment of Dividends on Preferred and Common Stock, on Basis of Feet of Film Leased from Licensed Manufacturers."

3

4

# Petitioner's Exhibit No. 131.

## GENERAL FILM COMPANY

### STATEMENT OF UNDIVIDED NET PROFITS CREDITED AFTER PAYMENT OF DIVIDENDS ON PREFERRED AND COMMON STOCK

DECEMBER 30, 1911

Total undivided net profits as credited	Year 1910	\$ 134,863.11	
	Year 1911	1,055,579.98	
		\$1,190,443.09	

Manufacturer	For Year 1910		For Year 1911									
	As Credited on Books	As Paid May 22 1912	As Paid								Total Amount Paid 80%	Unpaid 20%
			As Credited on Books	May 22 1912 30%	July 6 1912 10%	Aug. 6 1912 10%	Sept. 10 1912 10%	Oct. 1 1912 10%	Nov. 20 1912 10%			
Biograph Company	20,148.76	20,148.76	104,907.61	31,472.28	10,490.76	10,490.76	10,490.76	10,490.76	10,490.76	83,926.08	20,981.53	
Thomas A. Edison, Inc.	14,307.32	14,307.32	122,771.31	36,831.39	12,277.13	12,277.13	12,277.13	12,277.13	12,277.13	98,217.04	24,554.27	
Essanay Film Mfg. Company	13,378.59	13,378.59	102,316.70	30,695.01	10,231.67	10,231.67	10,231.67	10,231.67	10,231.67	81,853.36	20,463.34	
Kalem Company	10,443.10	10,443.10	90,833.31	27,249.99	9,083.33	9,083.33	9,083.33	9,083.33	9,083.33	72,666.64	18,166.67	
George Kleine	11,420.90	11,420.90	77,308.54	23,192.56	7,730.86	7,730.86	7,730.86	7,730.86	7,730.86	61,846.86	15,461.68	
Lubin Manufacturing Co.	9,901.22	9,901.22	101,370.65	30,411.20	10,137.06	10,137.06	10,137.06	10,137.06	10,137.06	81,096.50	20,274.15	
G. Melies	4,191.53	4,191.53	31,483.56	9,445.07	3,148.36	3,148.36	3,148.36	3,148.36	3,148.36	25,186.87	6,296.69	
Pathe Freres	19,090.50	19,090.50	164,965.92	49,489.78	16,496.59	16,496.59	16,496.59	16,496.59	16,496.59	131,972.73	32,993.19	
Selig Polyscope Company	13,805.16	13,805.16	109,703.03	32,910.91	10,970.30	10,970.30	10,970.30	10,970.30	10,970.30	87,762.41	21,940.62	
Vitagraph Co. of America	18,176.03	18,176.03	149,919.35	44,975.81	14,991.93	14,991.93	14,991.93	14,991.93	14,991.93	119,935.46	29,983.89	
Totals	\$134,863.11	\$134,863.11	\$1,055,579.98	\$316,674.00	\$105,557.99	\$105,557.99	\$105,557.99	\$105,557.99	\$105,557.99	\$844,463.95	\$211,116.03	





# Petitioner's Exhibit No. 132.

## GENERAL FILM COMPANY

### DISTRIBUTION OF UNDIVIDED NET PROFITS FOR YEARS 1910 AND 1911 CREDITED AFTER PAYMENT OF DIVIDENDS ON PRE- FERRED AND COMMON STOCK ON BASIS OF FEET OF FILM LEASED FROM LICENSED MANUFACTURERS

	Year 1910		Year 1911	
	No. of Feet Leased	Distribution of Surplus	No. of Feet Leased	Distribution of Surplus
Biograph Company	2,463,531	20,148.76	6,140,656	104,907.61
Thomas A. Edison, Inc.	1,749,315	14,307.32	7,186,289	122,771.31
Essanay Film Mfg. Company	1,635,761	13,378.59	5,989,000	102,316.70
Kalem Company	1,276,847	10,443.10	5,316,832	90,833.31
George Kleine	1,396,400	11,420.90	4,525,174	77,308.54
Lubin Manufacturing Company	1,210,594	9,901.22	5,933,624	101,370.65
G. Melies	512,486	4,191.53	1,842,857	31,483.56
Pathe Freres	2,334,140	19,090.50	9,656,106	164,965.92
Selig Polyscope Company	1,687,917	13,805.16	6,421,351	109,703.03
Vitagraph Co. of America	2,222,330	18,176.03	8,775,371	149,919.35
Totals	16,489,321	\$134,863.11	61,787,260	\$1,055,579.98
	Per Foot	\$.00818—	Per Foot	\$.01709—





By Mr. GROSVENOR:

1

Q. Mr. Pelzer, you have produced certain statements entitled respectively, "Statement of Undivided Net Profits credited after payment of dividends on preferred and common stock, December 30, 1911 (Petitioner's Exhibit 131), and "Distribution of Undivided Net Profits for the years 1910 and 1911, credited after payment of Dividends on Preferred and Common Stock on basis of feet of Film leased from Licensed Manufacturers" (Petitioner's Exhibit No. 132).

Are these statements produced by you in response to the request of counsel for the Government on pages 333 to 335 of the record? A. Yes, sir.

2

Q. This Petitioner's Exhibit 131 is a statement of the undivided net profits credited to the ten common stockholders of the General Film Company, and also shows the amounts paid on such credits as of what date? A. The amounts credited to manufacturers from whom the General Film Company obtained motion pictures, and are credited in accordance with the requirements of the contract, and not as common stockholders, and shows the amounts paid, and the dates of such payments.

3

Q. Did you receive any instructions from counsel, or confer with counsel, in regard to the answer that you should make to the question which I just addressed to you? A. No, sir.

Q. Now, have any amounts been credited on the books in the same way to these ten manufacturers of undivided net profits for the year 1912? A. Not yet.

Q. There have been no amounts credited to any of them for the past year, 1912? A. No; because the books have not yet been closed.

Q. Are you able to state approximately what were the undivided net profits for the year 1912? A. No, sir.

4

Q. Are the same greater or less than the figure here given for the amounts credited in this manner, that is, out of the undivided net profits, for the year 1911, to wit, \$1,055,579.98? A. I have not the slightest idea.

Q. Are you able to state what either the net profits, or the gross profits for the year 1912 of the General Film Company were? A. No, sir.

Q. Don't you know anything about the profits of

1 your company? A. I cannot give you details without figures in front of me.

Q. You are the Treasurer of the company? A. Yes, sir.

Q. Are you not able to give any approximate figure showing what the profits, or stating what the profits were for that year? A. I do not think that I am capable of carrying the figures of my books in my head, and of quoting those figures to you, Mr. Grosvenor.

2 Q. I do not ask you for the figures stated accurately—I said are you able to give approximately what the net profits for the year 1912, were? A. I told you I could not, Mr. Grosvenor.

Q. Do you know whether they were one thousand dollars or ten million dollars? A. No, sir, I do not.

Q. Or whether they were \$3,000,000? A. No, sir.

Mr. CALDWELL: This line of questioning is objected to on the ground that the witness has repeatedly stated that the books for 1912 have not yet been closed.

3 Q. Don't you as Treasurer make up from time to time statements showing what the profits of your company are as shown by the books as of a certain date? A. I have not been Treasurer long enough, Mr. Grosvenor, to do it.

Q. What? A. I have not been Treasurer long enough to do that.

Q. Don't you know whether or not any statements are made up from time to time in the company's office? A. I believe they are, roughly.

4 Q. Well, now, what I want is a rough statement of what the figures were for the year 1912? A. No such statement has been made that I have seen since I have occupied the office and no attempt has been made to get it because the figures when prepared will give that.

Q. Do you mean to say that you, as Treasurer, have no idea as to what the profits of your company are for a year, or any period of a year, until the books are closed for that year? A. If I had been Treasurer over a longer period I might be able to give you a more definite answer, but I have only been Treasurer since December the 16th.

Q. Since December 16th, 1912? A. Yes, sir.

Q. Have you not made any inquiry as to what approximately would be the earnings for the year 1912? A. That would seem to me to be a useless inquiry, in view of the fact that we are now closing the books, and we will get the information as soon as they are closed.

Q. You mean you will get the information as to the exact figure when the books are closed? A. Yes, sir.

Q. Can you tell whether the business has been unprofitable or profitable until the books are closed? A. I suppose I could if I had made an inquiry.

Q. Have you made any inquiry? A. There has been no occasion for me to do so.

Q. I didn't ask you that. Have you made any inquiry? A. I have not.

Q. Are you able to state whether or not the business has been profitable or unprofitable? A. I believe it has been profitable.

Q. Now, as compared with 1911, has it been more profitable, or less profitable? A. That I could not say.

Q. Mr. Pelzer, this statement which you have produced, and which has been marked Exhibit 131, shows that during the year 1912 from time to time beginning with May 22nd, of the year 1912, payments were made to these ten manufacturers out of net profits for the year 1911. As I understand it no payments of a similar character have been made to those manufacturers out of any profits for the year 1912? A. No, sir.

Q. Now, the same exhibit (131) gives the amount as credited to those ten manufacturers, or companies, as \$1,055,579. When was that amount credited to their respective accounts? Exhibit 131 does not show the date. Are you able to give that date? A. I could not say. The books would show it, but it did not occur to me to put that date on there, possibly in May, 1912, but I would not be sure about that.

Q. Are you able to give on the record the names of the common stockholders of the General Film Company? A. I have given you those.

Q. Have you—I had forgotten it? A. Yes, sir.

Q. Will you kindly read them on the record, I am sorry to ask you to do so again? A. Biograph Company, Thomas A. Edison, Incorporated, Kalem Company, George Kleine, Lubin Manufacturing Company, G. Melies, Pathe Freres,



- 1 George K. Spoor, William N. Selig, and Vitagraph Company of America.

Q. Now, of those names which you have just given, eight are also in this list of ten manufacturers to whom you have testified payments were made as shown on this exhibit (131) out of the undivided net profits for the years 1910 and 1911? A. Eight of them are so named. Are named in that list, is that what you mean?

- Q. I think I can make it a little clearer. That is to say, eight of those ten manufacturers getting payments, as shown on this Exhibit 131, are also common stockholders in the General Film Company? A. Yes, sir.
- 2

Q. And the other two common stockholders, namely, Selig and Spoor, are, respectively, the presidents of the Selig Polyscope Company and the Essanay Film Manufacturing Company, the two other manufacturers which also received payments out of the undivided net profits? A. Yes, sir.

Q. And these men, Selig and Spoor, are also directors, and were during the years 1911 and 1912 of the General Film Company? A. Yes, sir.

- Q. Now, you have testified that these payments shown by Exhibit 131, were payments made under contract, and not payments made to them as common stockholders of the General Film Company, is that right? A. Yes, sir.
- 3

Q. To what contract are you referring? A. The contract referred to as Exhibit 8, on page 116 of the original Petition, that being one of the contracts.

Q. And that being the contract between the General Film Company and the Edison Manufacturing Company? A. Yes, sir.

- Q. And there are nine other practically identical contracts between the General Film Company and each of the other nine manufacturers? A. Yes, sir.
- 4

Q. And all entered into on the same date, April 21, 1910? A. I believe so.

Q. You have produced in this case a statement of the dividends paid on the preferred and common stock of the General Film Company, which appears at page 327 of the record, showing that twelve per cent. has been paid out of the net earnings for the years 1910, 1911 and 1912 on the common stock. Those payments of twelve per cent. out of the net earnings as shown by that exhibit to which

I have just referred at page 327 of the record, were made 1  
to the same manufacturers, or to the same parties as received these payments out of the undivided net profits referred to in Exhibit 131, except that Selig and Spoor took the place of the Selig and Essanay Companies so far as the twelve per cent. dividends on the common stock are concerned? A. Yes, sir.

Q. Now, other than these payments shown by Exhibit 131, to the ten manufacturers named, and the payments of twelve per cent. shown in the record at page 327 to which I have just referred, have there been any payments made to any of the manufacturers? A. Payments for 2  
motion film supplied?

Q. No, I mean any payments out of net earnings? A. No, sir.

Q. Now, are there any payments made to any of the directors for their services? A. Yes, sir.

Q. What do the directors receive for their services? A. Twenty dollars, and mileage for each meeting.

Q. What payments are made to the President for his services, does he have a stated salary? A. I don't think that I am called upon to answer that question, am I, Mr. Caldwell? 3

Q. I don't see why you should have any objection to it? A. Why, I have decided objection to stating it, Mr. Grosvenor, particularly in view of the fact that the information is being gathered for Mr. MacDonald, of the Kinetograph Company.

Mr. MACDONALD: I happen to know it in this case, and I will withdraw the question.

Mr. GROSVENOR: I am not appearing here for the Kinetograph Company representatives, or any other representatives. 4

The Witness: Well, I notice that you have been in consultation with him.

Mr. GROSVENOR: Mr. Pelzer, the General Film Company is charged here with being an unlawful combination, and in partnership with the Motion Picture Patents Company to monopolize the rental exchange busi-

1           ness and manufacturing business. My object is to show that the General Film Company is merely a partnership among these ten manufacturers.

The Witness: I wish to state that Mr. MacDonald stated to me this morning that he would secure the information that he was after and that he was going to secure it in this way.

2           Mr. CALDWELL: Counsel for the defendants request the Examiner to note on the record that Mr. MacDonald has been conferring here with counsel for the petitioner during the cross examination of this witness.

Will you also, Mr. Examiner, read the remarks of Mr. MacDonald just made wherein he withdrew the question, and stated that he already had the information?

The remarks of Mr. MacDonald which the Examiner is requested to read are as follows: "Mr. MacDonald: I happen to know it in this case, and I will withdraw the question."

3           The Witness: I also wish to state that according to the trade papers, Mr. MacDonald is also an officer of the Kinetograph Company, and I also wish to note the fact that another gentleman connected with the Kinetograph Company, is present in the room, whom I believe is the auditor of that company, and a former auditor of the General Film Company.

Mr. GROSVENOR: You mean Mr. Who?

The Witness: Mr. Repton.

4           Mr. GROSVENOR: He has been subpoenaed. As you seem to be somewhat exercised, Mr. Pelzer, in this matter, and seem to think it an impropriety for counsel for the Government to confer with anyone, let me state to you that I always deem it the duty of counsel for the Government to confer with any one in connection with any case brought by the Government, which person, conferred with, complains that he, or his client, has in any way been injured by the companies being prosecuted, or is likely to be so injured; and you will prob-



ably find me in frequent conferences with persons who are not in entire sympathy with the General Film Company.

Mr. MACDONALD: I wish to state on the record that I came into these hearings for the first time on Tuesday of this week, and had my appearance entered on behalf of Richard A. Rowland, a preferred stockholder who with his partner owns about one-eighth of the entire preferred stock of the General Film Company; and I came into these hearings for the distinct and only purpose of gaining such information as I could legitimately gain, and acquire for the benefit and for the protection of the preferred stockholders whom I represent at the present time, or may hereafter represent; and I have been conferring with counsel for the Government and I have been examining the record here and I shall continue to do so as long as I am permitted on behalf of the people whom I represent. I did state to Mr. Pelzer, as he stated here on the record, that I was here for the purpose of gaining information on behalf of the preferred stockholders, and I stated to Mr. Pelzer if his company had not refused me the information which I demanded formally from them, before I came here, it would not have been necessary for me to come to these hearings and to get information in the way that I am now getting it; I shall continue to demand from his company, both at these hearings, and in such other way as I may have of demanding, any information that I think the preferred stockholders are entitled to have regarding the affairs of the General Film Company.

Mr. GROSVENOR: The purpose of this examination is in part as follows. The Government in this case is asking for the dissolution of the General Film Company. It is obvious that if it is shown that the common stockholders who are also directors, have distributed practically the entire net earnings among themselves, the position of the preferred stockholders may be precarious when the dissolution takes place in accordance with the prayer of the petition, and therefore any evidence of this character is necessary in the record in order to accomplish by the Court an equit-

- 1           able dissolution and distribution of the assets of the company.

By Mr. GROSVENOR:

Q. Let us go back and see what the question is.

The last question was read as follows: "Q. What payments are made to the president for his services, does he have a stated salary?"

- 2           A. I refuse to answer that question unless instructed by my counsel to do so.

Q. Who is the president to-day of the General Film Company? A. Frank L. Dyer.

Q. And he is connected with, or has been connected with which one of the ten manufacturers? A. He was formerly connected with Thomas A. Edison, Incorporated.

Q. And was he an officer of that company? A. Yes, sir.

Q. When did he cease, if at all, being an officer? A. I don't know exactly, I think somewhere around the first of November, 1912.

- 3           Q. Now, who preceded Mr. Dyer, as President of the General Film Company? A. Mr. J. A. Berst.

Q. Has he been at all times during which the General Film Company has been in existence an officer of the Pathe Freres Company? A. I believe he is Vice-President and has been Vice-President.

Q. That is one of the other ten manufacturers? A. Yes, sir.

Q. Who preceded Mr. Berst? A. Mr. J. J. Kennedy.

- 4           Q. And during the time that he was President of the General Film Company with which of the ten manufacturers was he connected? A. The Biograph Company.

Q. These three men between them have been presidents of the General Film Company during the entire existence of that company? A. Yes, sir.

Q. Let us take next, the Vice-President. The Vice-President to-day is Mr. George Kleine? A. Yes, sir.

Q. Has he been at all times Vice-President of the General Film Company since the incorporation of that company? A. Yes, sir.

Q. And during this period, he has been one of the ten manufacturers? A. He is an importer. 1

Q. He is one of the ten licensed manufacturers and importers of the Patents Company? A. Yes, sir.

Q. And one of the ten to whom this distribution has been made? A. Yes, sir.

Q. Do you decline to state what his salary is also? A. Yes, sir.

Q. Let us consider next the Treasurer He is now yourself? A. Yes, sir.

Q. And I believe you have testified that you represent with the Patents Company, the Edison interests? A. Yes, sir. 2

Q. And do you represent their interests with the General Film Company? A. No, sir.

Q. You are a free lance with the General Film Company, is that it? A. Yes, sir.

Q. And how long have you been Treasurer? Since December 16th, 1912? A. Since December 16th, 1912.

Q. Who preceded you as Treasurer? A. Mr. Samuel Long.

Q. Of which of the ten licensed manufacturers, if any, was he an officer? A. Kalem Company. 3

Q. And was he Treasurer from the inception of the General Film Company until you succeeded him? A. No. He was preceded by Mr. Berst.

Q. Mr. Berst, who is now President— A. (Interrupting). Who was President. Subsequently President.

Q. Then Mr Berst and Mr Long and yourself between you, have, one or the other, been Treasurer of the General Film Company since its inception? A Yes, sir.

Q. You stated that Paul Melies is now the Secretary? A. Yes, sir.

Q. And he is also Director? A. Yes, sir. 4

Q. Succeeding his father, Gaston Melies? A. As a Director, yes, sir.

Q. Gaston Melies is one of the ten licensed manufacturers? A. Yes, sir.

Q. Mr. Pelzer, in view of your production of the statements of the payment of royalties today, I will not ask you to produce the books, which I requested of you yesterday, but as Treasurer of the Company, I will ask you



1 that they are of course preserved, and at some later time, if I so desire, they will be available? A. Yes.

Q. Then you will see that they are all kept, and good care taken of them? A. Yes.

Q. Have any recent agreements been concluded between the General Film Company and the manufacturers relating to the distribution of the output of the licensed manufacturers or any of them, in Canada? A. No, sir.

Q. Or any resolutions in this regard? A. Not to my knowledge.

2 Q. Were any resolutions in that regard passed by the Board of Directors? A. No, sir.

Mr. GROSVENOR: I offer in evidence Petitioner's Exhibit No. 133, being the agreement between the Motion Picture Patents Company, Edison Manufacturing Company, and Eastman Kodak Company of January 1st, 1909.

### **Petitioner's Exhibit No. 133.**

3 1. AGREEMENT made this 1st day of January, 1909, by and between MOTION PICTURE PATENTS COMPANY, a corporation organized and existing under the laws of the State of New Jersey and having an office at Jersey City, in said State, party of the first part (hereinafter referred to as the PATENTS COMPANY); the EDISON MANUFACTURING COMPANY, a corporation organized and existing under the laws of the State of New Jersey and having an office at Orange, in said State, party of the second part (hereinafter referred to as the EDISON COMPANY), and the EASTMAN KODAK COMPANY, a corporation organized and existing under the laws of the State of New York and having a place of business at the City of Rochester, in said State, party of the third part (hereinafter referred to as the EASTMAN COMPANY),  
4 WITNESSETH:—

2. WHEREAS, the Patents Company represents that it is organized to own, deal in and grant licenses under letters patent pertaining to the motion picture art, and that it

is the owner of all the right, title and interest in and to United States Letters Patent:— 1

No. 578,185, dated March 2, 1897, for Vitascope, granted Thomas Armat;

No. 580,749, dated April 13, 1897, for Vitascope, granted Thomas Armat;

No. 586,953, dated July 20, 1897, for Phantascope, granted Charles F. Jenkins and Thomas Armat;

No. 588,916, dated August 24, 1897, for Kinetoscope, granted Charles M. Campbell as assignee of Willard G. Steward and Ellis F. Frost; 2

No. 629,063, dated July 18, 1899, for Kinetoscopic Camera, granted American Mutoscope Company as assignee of Herman Casler;

No. 673,329, dated April 30, 1901, for Kinetoscope, granted The American Vitagraph Company as assignee of Albert E. Smith;

No. 673,992, dated May 14, 1901, for Vitascope, granted Thomas Armat;

No. 707,934, dated August 26, 1902, for Projecting Kinetoscope, granted E. & H. T. Anthony as assignees of Woodville Latham; 3

No. 722,382, dated March 10, 1903, for Animated Picture Apparatus, granted to American Mutoscope & Biograph Company as assignee of John A. Pross;

No. 744,251, dated November 17, 1903, for Kinetoscope, granted Albert E. Smith;

No. 770,937, dated September 27, 1904, for Kinetoscope, granted The Vitagraph Company of America as assignee of Albert E. Smith;

No. 771,280, dated October 4, 1904, for Winding Reel, granted Albert E. Smith; 4

No. 785,205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted The Vitagraph Company of America as assignee of William Ellwood, and

No. 785,237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted The Vitagraph Company of America as assignee of Albert E. Smith;

- 1 all of which said letters patent relate to improvements in the motion picture art, and that there are no outstanding licenses, shop rights, or other rights under said letters patent, or either of them, except a license for Parlor Kinetoscopes under letters patent Nos. 578,185, 580,749, 586,953, and 673,992, and certain alleged licenses under U. S. letters patent No. 586,953, which are in dispute, and excepting a license granted by the American Mutoscope & Biograph Company to the firm of Marvin and Casler to manufacture and sell cameras and exhibiting or projecting machines under letters patent owned by it (some of which
- 2 are hereinbefore referred to) for use in foreign countries only, and excepting certain licenses granted by the Armat Motion Picture Company to the American Mutoscope & Biograph Company under letters patent Nos. 578,185, 580,749, 586,953, 588,916 and 673,992, and by the latter Company to the former Company under letters patent Nos. 707,934 and 722,382, which licenses, however, are by agreement between said parties, suspended and are not to be acted upon until the Patents Company becomes bankrupt, ceases doing business or shall be dissolved, voluntarily or
- 3 otherwise, or its Charter shall be repealed; and

3. WHEREAS, the Patents Company further represents that it is the owner of all the right, title and interest in and to reissued letters patent of the United States No. 12,037, dated September 30, 1902, and No. 12,192, dated January 12, 1904, the original letters patent whereof are No. 589,168 and dated August 31, 1897, and that there are no outstanding licenses, shop rights or other rights under said reissued letters patent, or either of them, except license agreements thereunder between the Edison Company
- 4 and Pathe Freres, a corporation organized and existing under the laws of the State of New Jersey and having an office at Jersey City, in said State, dated May 20, 1908, (which went into effect June 20, 1908), and between the Edison Company and the Kalem Company, of New York; the Essanay Company, of Chicago, Illinois; Siegmund Lubin, of Philadelphia, Pennsylvania; George Melies Company, of said Chicago; the Selig Polyscope Company, of said Chicago, and The Vitagraph Company of America, of New York, all dated January 31, 1908; and



4. WHEREAS, the Patents Company further represents that it has licensed each of the parties to the license agreements mentioned in Paragraph 3, including the Edison Company, (with the exception of said George Melies Company) and also the American Mutoscope & Biograph Company, of New York, and George Kleine, of Chicago, Illinois, by agreements in writing to take effect January 1st, 1909, to manufacture and use in the United States, its territories and possessions (hereinafter referred to as the "territory aforesaid") cameras or apparatus embodying the inventions of said reissued letters patent No. 12,037 and letters patent Nos. 629,063 and 707,934, and to manufacture, print and produce positive motion pictures embodying the inventions of said reissued letters patent No. 12,192, and to lease the same in the United States, its territories, dependencies and possessions (with the exception of its insular possessions and Alaska, therein referred to as the "lease territory") on film of a greater width than approximately one (1) inch, upon condition that they be used solely in exhibiting or projecting machines licensed by the Patents Company for the use of which a royalty or rent is paid by the user thereof while in use containing the inventions, or some of them, of said letters patent Nos. 578,185; 580,749; 586,953; 588,916; 673,329; 673,992; 722,934; 722,382; 744,251; 770,937; 771,280; 785,205, and 785,237, and to sell positive motion pictures containing the inventions of said reissued letters patent number 12,192, on film of a width approximately one (1) inch or less in said "lease territory," and on film of any width in and for said insular possessions and Alaska and foreign countries, all of which license agreements are upon substantially the same terms and conditions, except that the Edison Company is not to pay any royalties to the Patents Company, and except that George Kleine is prevented from manufacturing negative motion pictures in the "territory aforesaid" and from manufacturing from imported negative motion pictures, positive motion pictures, and importing, in all more positive motion pictures than a certain number of thousand feet per week; and that the Patents Company may hereafter have other licensees (said licensees which it now has or may hereafter have being referred to hereinafter, for brevity, as the "Patents Company licensees"); and that in case the Patents Company should become bankrupt,

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1 cease doing business or should be dissolved, voluntarily or  
otherwise, or its Charter should be repealed, then, on  
the happening of either of such events, the Patents Com-  
pany is to forthwith assign to the Edison Company, its  
successors and assigns, the entire right, title and interest  
in and to said reissued letters patent Nos. 12,037 and 12,-  
192, and the inventions therein set forth, together with  
all claims and demands, both at law and in equity, for  
infringement of said reissued letters patent, or either of  
them, and also on the happening of either of such events,  
2 all of the said license agreements hereinbefore referred  
to in this paragraph are to forthwith terminate and be  
at an end; and that the license agreements of the parties  
referred to in Paragraph 3 have been suspended, except  
that any one of them is to terminate on the termination  
of the hereinbefore mentioned agreement between the same  
party as licensee and the Patents Company, before the  
happening of either of such events, and forthwith and  
simultaneously with the happening of either of such events  
(if before August 31, 1914), all of said license agreements  
referred to in Paragraph 3, that have not been so ter-  
minated, shall be and become of full force and effect,  
3 subject to continuation and termination thereof as therein  
provided; and

5. WHEREAS, the Patents Company further repre-  
sents that in and by the license agreements aforesaid with  
it, the licensees named therein are entitled to receive from  
the Patents Company a share of twenty-four (24) per cent  
of the annual gross royalties or rents collected by or paid  
to the Patents Company for the use of all exhibiting or  
projecting machines containing any of the inventions de-  
scribed and claimed in the letters patent referred to in  
4 Paragraph 4, which twenty-four (24) per cent of said  
annual gross royalties or rents shall be paid to the East-  
man Company and the shares thereof to which said licens-  
ees are entitled shall be apportioned to and paid to such  
licensees by the Eastman Company as hereinafter provided;  
and

6. WHEREAS, the Patents Company further repre-  
sents that in and by the license agreements aforesaid with  
it the licensees named therein are each obligated to use

exclusively in the manufacture, in the "territory afore-  
 said," of motion pictures made on translucent or trans-  
 parent sensitized film, designated in said agreements as  
 "Licensed Film" manufactured and sold by a film manu-  
 facturer or manufacturers under an agreement in writing  
 with the Patents Company; each of said license agreements  
 further providing for the collection from the licensee  
 named therein by such manufacturer or manufacturers of  
 the following royalty or royalties for such "Licensed  
 Film" of a width approximately one inch and three-eighths  
 of an inch ( $1\frac{3}{8}$  in.) purchased by said licensee during the  
 year preceding June 20th, 1909, and during any year,  
 counting from June 20th, 1909, during the continuance  
 of the license agreement, and up to August 31, 1914, that  
 is to say: If such shipments of such "Licensed Film" to  
 the licensee, on the orders of such licensee, for any such  
 year, be four million running feet or less, a royalty or  
 one-half ( $\frac{1}{2}$ ) cent per running foot on the total number  
 of running feet for that year; if such shipments, on the  
 orders of such licensee, of such "Licensed Film," for any  
 such year, exceed four million running feet, but do not  
 exceed six million running feet, a royalty of four and one-  
 half ( $4\frac{1}{2}$ ) mills per running foot on the total number  
 of running feet for that year; if such shipments, on the  
 orders of such licensee, of such "Licensed Film," for any  
 such year, exceed six million running feet, but do not  
 exceed eight million running feet, a royalty of four (4)  
 mills per running foot on the total number of running feet  
 for that year; if such shipments, on the orders of such  
 licensee, of such "Licensed Film," for any such year, ex-  
 ceed eight million running feet but do not exceed ten mil-  
 lion running feet, a royalty of three and three-quarter  
 ( $3\frac{3}{4}$ ) mills per running foot on the total number of run-  
 ning feet for that year; and if such shipments, on the  
 orders of such licensee, of such "Licensed Film," for any  
 such year, exceed ten million running feet, a royalty of  
 three and one-quarter ( $3\frac{1}{4}$ ) mills per running foot for the  
 total number of running feet for that year. And for  
 "Licensed Film" narrower or wider than approximately  
 one inch and three-eighths of an inch ( $1\frac{3}{8}$ ) or thirty-five  
 (35) millimeters, the above mentioned royalties shall be  
 reduced or increased in proportion to the reduction or in-  
 crease in width of such narrower or wider "Licensed



- 1 Film" below or above the width of such "Licensed Film" of a width of approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.); and

2 7. WHEREAS, the Eastman Company represents that it has heretofore manufactured by secret processes and embodying secret compositions and patented invention at said City of Rochester, State of New York, sensitized translucent or transparent film (having a nitrocellulose base) suitable for use in the commercial manufacture, printing and production of negative and positive motion pictures, and has sold the same in the "territory aforesaid" and in foreign countries, the parties to the license agreements mentioned in Paragraph 3 having been some of its customers therefor, and that it has special facilities for the manufacture of such film; and

3 8. WHEREAS, the Edison Company, not being a manufacturer of translucent or transparent sensitized film suitable for use in the manufacture, printing or production of motion pictures, entered into two agreements in writing with the Eastman Company bearing date on or about the 20th day of May, 1908, respecting the manufacture of such film, and the supplying of the same to said Edison Company and to the licensees of the license agreements with the Edison Company mentioned in said Paragraph 3, and the collecting from such parties and the payment by it to the Edison Company of certain royalties upon such film; and

4 9. WHEREAS, the Edison Company and the Eastman Company are desirous of terminating and cancelling said two agreements in writing, and the Patents Company not being a manufacturer of translucent or transparent sensitized film suitable for use in the manufacture, printing or production of motion pictures, is desirous of availing itself of the manufacturing facilities therefor of the Eastman Company by having it manufacture such film (having a nitrocellulose base) by its present secret processes and embodying its present secret compositions and patented invention and supply such film to the "Patents Company licensees," and is also desirous of having the Eastman Company collect from the latter, for payment to the Pat-

ents Company, the royalties referred to in Paragraph 4 of this agreement, and to collect from the other persons, firms and corporations, as provided for in Paragraph 14, for payment to the Patents Company, the royalties provided for in Paragraph 17: 1

NOW THEREFORE, the parties hereto, for and in consideration of the sum of one dollar to each paid by the other, the receipt of which is hereby acknowledged, and for other good and valuable considerations from each to the other moving, including the covenants and agreements hereinafter entered into by them, do covenant and agree as follows: 2

10. The Patents Company hereby grants to the Eastman Company, and the latter accepts, for the term and subject to the covenants, conditions and stipulations hereinafter expressed, the sole and exclusive right and authority, for the "territory aforesaid," to manufacture the "Licensed Film" aforesaid, and also such other translucent or transparent sensitized film suitable for the production commercially of positive and negative motion pictures, and sell such "Licensed Film" to the "Patents Company licensees," and such other film to other persons, firms and corporations as provided for in Paragraph 14, the right and authority hereby granted to the Eastman Company being sole and exclusive, even as to the Patents Company, in the "territory aforesaid," but, except as hereinafter provided, strictly limited to the manufacture of such "Licensed Film" and such other film and the sale of such "Licensed Film" to the "Patents Company licensees," and the sale of such other film to said other persons, firms and corporations, and not including any right to the Eastman Company to manufacture, use or sell, in the "territory aforesaid," motion picture cameras embodying any invention covered by said reissued patent No. 12,037 and said letters patent Nos. 629,063 and 707,934, except that the Eastman Company may and is hereby given the right to use such motion picture cameras as it may desire for its own use, including film testing; and it being further provided that the right and authority hereby granted is personal to, and not assignable or otherwise transferable, in whole or in part, by the Eastman Company, which shall 3 4

- 1 have no right to delegate any part thereof, or grant any right or privilege whatsoever thereunder or under either of said reissued letters patent No. 12,037 and 12,192, and letters patent Nos. 629,063 and 707,934 to any person, firm or corporation, unless the said Eastman Company should dispose of its entire motion picture film business to a single purchaser, in which case it may assign the right and authority hereby granted to it, together with all its rights under this agreement, to such purchaser, who shall then and thereafter be recognized and dealt with by the Patents Company as the successor of the Eastman Company in the ownership of said right and authority and all other rights of the Eastman Company under this agreement and be entitled to all the benefits and privileges thereof; but before any such purchaser shall be recognized as such assignee and successor of the Eastman Company, said purchaser shall first agree in writing to accept, act under, and perform the covenants, stipulations and conditions of this agreement.

- 3 11. The Patents Company covenants and agrees to promptly notify the Eastman Company of the names and addresses of all the "Patents Company licensees" to whom it has granted or may hereafter grant licenses, and of the dates when their license agreements take effect, in order that the Eastman Company may be advised as to whom it is to sell the "Licensed Film" aforesaid, and also be able to compute the royalty referred to in Paragraph 6, and also covenants and agrees to promptly notify the Eastman Company of the revocation, cancellation or termination otherwise of any license agreements with the "Patents Company licensees" so that the Eastman Company may know that such license agreements have been terminated and discontinue the sale of such "Licensed Film" to such persons, firms and corporations named therein; it being understood that when any such license is so terminated, the licensee named therein shall cease to be one of the "Patents Company licensees" and that the Eastman Company shall, immediately upon being so notified of the fact, discontinue the sale of such "Licensed Film" to such licensee.

12. The Patents Company further authorizes and em-



powers the Eastman Company to charge to and collect from each of the "Patents Company licensees" to whom the Eastman Company supplies such "Licensed Film," and pay over to it (said Patents Company), in the manner hereinafter provided for, the royalties referred to in Paragraph 6 of this agreement. 1

13. The Patents Company, for itself, its successors, assigns and legal representatives, hereby releases, acquits and discharges the Eastman Company from any and all claims, demands and liability for profits and damages because of any infringement by the Eastman Company of said letters patent Nos. 629,063 and 707,934, or either of them, or the use of the inventions covered thereby prior to the date hereof. 2

14. The Eastman Company covenants and agrees that during the continuance of this agreement it will fill all orders for the "Licensed Film" aforesaid received by it from the "Patents Company licensees" with reasonable diligence and at the prices hereinafter provided for, if it is satisfied that they are and will be able to pay for the same, and will manufacture all such "Licensed Film" (having a nitrocellulose base), by its present secret processes and will embody therein its present secret compositions and patented invention, and that it will not, after the date hereof, and during the continuance of this agreement knowingly furnish or sell, in the "territory aforesaid," except for export, as hereinafter provided for, such sensitized film for the commercial production of negative and positive motion pictures to anyone but the "Patents Company licensees," except to the extent of two and one-half ( $2\frac{1}{2}$ ) percent of the total amount of such "Licensed Film" supplied to the parties to the license agreements referred to in Paragraph 3 and prior to the date hereof and to the "Patents Company licensees" from the date hereof to June 20, 1909, and to said "Patents Company licensees" during any one year, counting from June 20, 1909, of the continuance of this agreement, which amount, of a width approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) the Eastman Company has furnished prior to the date hereof by and with the authority of the Edison Company, and from the date hereof the Eastman Company 3 4

- 1 (by and with the consent and authority of the Patents Company, which it hereby grants) reserves the right to furnish or supply to persons not engaged in the business of manufacturing, selling, loaning, renting out or otherwise disposing of or dealing in motion pictures in the "territory aforesaid;" and with the further exception that the Eastman Company (by and with the consent and authority of the Patents Company, which it hereby grants) reserves the right to manufacture and sell such translucent or transparent sensitized film suitable for the commercial production of negative and positive motion pictures of a
- 2 width not to exceed approximately one (1) inch in the "territory aforesaid" to persons, firms and corporations engaged in the business of manufacturing, selling, loaning, renting out or otherwise disposing of or dealing in motion pictures in the "territory aforesaid" upon condition, however, that in case any of them produces thereon any picture greater in size than approximately three-quarters ( $\frac{3}{4}$ ) of an inch, on a line either parallel to or at right angles to the edge of said film, and the Eastman Company has knowledge thereof, it will cease supplying such film to any such person, firm or corporation; and
- 3 with the further express exception that the Eastman Company (by and with the consent and authority of the Patents Company, which it hereby grants) reserves the right to manufacture and sell, in the "territory aforesaid," such translucent or transparent sensitized film suitable for the commercial production of negative and positive motion pictures of any width to persons, firms and corporations (not "Patents Company licensees") now having an established business of manufacturing motion pictures in any country foreign to the United States (hereinafter, for
- 4 brevity, called "foreign manufacturers"), who now manufacture negative or positive motion pictures in the United States, or who may, after the date of this agreement, commence the manufacture of negative and positive motion pictures in the United States.

15. The Eastman Company further covenants and agrees that it will mark conspicuously on each box or package containing such "Licensed Film," supplied by it to the "Patents Company licensees," the following words and figures—

## "LICENSED FILM.

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Licensed for Use Only by Licensees

of the

MOTION PICTURE PATENTS COMPANY."

16. It is mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the maximum prices to be charged by the Eastman Company to the "Patents Company licensees" during the continuance of this agreement shall be three cents net per running foot for non-perforated "Licensed Film" (having a nitrocellulose base) approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and three and one-quarter ( $3\frac{1}{4}$ ) cents net per running foot for perforated "Licensed Film" (having a nitrocellulose base) approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width (which prices shall be reduced or increased in proportion to the reduction or increase in width of narrower or wider "Licensed Film" than that approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width) plus the royalties referred to in Paragraph 6 of this agreement, which are to be charged to the "Patents Company licensees" (except to the Edison Company); it being further covenanted and agreed, however, that the Eastman Company may reduce these prices of three (3) and three and one-quarter ( $3\frac{1}{4}$ ) cents, respectively, if it should consider it commercially desirable to do so, but in no case shall it reduce the aforesaid royalties to be charged to and collected by it from the "Patents Company licensees" for the Patents Company, without the consent of the latter.

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17. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the royalties referred to in Paragraph 6 of this agreement shall not be charged by the Eastman Company to the Edison Company, but that the maximum prices to be charged by the Eastman Company to said Edison Company shall be (unless reduced as provided for in Paragraph 18, when the Edison Company shall have the benefit of such reduced price) three (3) cents net per running foot



1 for non-perforated "Licensed Film" (having a nitrocellulose base) approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and three and one-quarter ( $3\frac{1}{4}$ ) cents net per running foot for perforated "Licensed Film" (having a nitrocellulose base) approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, which prices shall be reduced or increased in proportion to the reduction or increase in width of narrower or wider "Licensed Film" than that approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width.

2 18. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company, that on each sale of "Licensed Film" to the "Patents Company licensees" (with the exception of the Edison Company), the Eastman Company shall, in the first instance, that is to say, when such "Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, is billed and shipped by it, charge the licensees with its price of three (3) cents or three and one-quarter ( $3\frac{1}{4}$ ) cents, as the case may be, per running foot, plus  
 3 the maximum royalty of five (5) mills per running foot, referred to in Paragraph 6 of this agreement, and on the expiration of each year, counting from June 20, 1909, shall adjust the royalty account of each licensee as to "Licensed Film" so billed and shipped to them and paid for by them, according to the royalty schedule set forth in said Paragraph 6, returning to the licensee any amount such licensee may have overpaid, according to said schedule, and paying the balance to the Patents Company; and that on each sale of the other film of a width approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width to the  
 4 amount of two and one-half ( $2\frac{1}{2}$ ) per cent. of the total amount of "Licensed Film" supplied to the "Patents Company licensees" during any one year, counting from June 20, 1909, of the continuance of this agreement, as provided for in Paragraph 14, a royalty of one-half ( $\frac{1}{2}$ ) cent per running foot, and which royalty the Eastman Company is to pay to the Patents Company on such film sold by it which is paid for by the purchaser thereof; and on each sale of said other film which is not to exceed approximately one inch (1 in.) in width, as provided for in Paragraph 14, the Eastman Company shall include in the price charged

for such film to the purchaser thereof a royalty amounting to such proportion of one-half ( $\frac{1}{2}$ ) cent per running foot as the width of such film bears to the film approximately one and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and which royalty the Eastman Company is to pay to the Patents Company on such film sold by it which is paid for by the purchaser thereof; such adjustment and payments to the licensee and the Patents Company to be made by the Eastman Company within thirty (30) days after the expiration of each such year, counting from June 20, 1909, provided, however, that if, at the time such payment of royalties is due from the Eastman Company to the Patents Company, the Edison Company should be indebted to the Eastman Company for "Licensed Film" or other supplies purchased from or furnished by the Eastman Company to the Edison Company during such year, the royalties shall be applied by it on account of such indebtedness, the balance, if any, remaining over such indebtedness, to be paid by the Eastman Company to the Patents Company, and a statement at the same time shall be given by the Eastman Company to the Patents Company of the amount of such indebtedness incurred after June 20, 1909, to which said royalties have been applied by it.

It is mutually covenanted and agreed by and between the Patents Company, the Edison Company and the Eastman Company, that all royalties heretofore paid to the Eastman Company by the licensees of the license agreements with the Edison Company referred to in Paragraph 3, between June 20, 1908, and the date hereof, under and in accordance with the aforesaid agreements between the Edison Company and the Eastman Company, referred to in Paragraph 8, and all royalties that may be paid to the Eastman Company by the "Patents Company licensees" between the date hereof and June 20, 1909, shall be adjusted in the same manner as provided for in this paragraph (except that the royalties that may be paid by the licensees, George Kleine and the American Mutoscope & Biograph Company to the Eastman Company, for such period, shall be adjusted on the same basis as if each of said licensees had purchased "Licensed Film" from the Eastman Company at the same rate during the entire year preceding June 20, 1909, that such "Licensed Film" was billed and shipped to and paid for by each between the

1 date hereof and June 20, 1909), and the amount which any  
 such licensee may have overpaid, according to the royalty  
 schedule in said Paragraph 6, shall be returned to the  
 licensee so overpaying the same within thirty (30) days  
 after June 20, 1909, and the balance remaining, together  
 with the royalties that have been paid between June 20,  
 1908, and June 20, 1909, on each sale of film of a width  
 approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$   
 in.) to the amount of two and one-half ( $2\frac{1}{2}$ ) per cent. of  
 the total amount of "Licensed Film" supplied to the li-  
 2 censees of the license agreements with the Edison Com-  
 pany referred to in Paragraph 3, and to the "Patents  
 Company licensees," and together with the royalty on the  
 sale of other film not to exceed three-quarters ( $\frac{3}{4}$ ) of an  
 inch in width prior to the date hereof under the said agree-  
 ment between the Edison Company and the Eastman Com-  
 pany, referred to in Paragraph 8, and together with the  
 royalty on the other film not to exceed approximately one  
 (1) inch in width, received by it between the date hereof  
 and June 20, 1909, as provided for in this paragraph, shall  
 be paid to the Edison Company and the Patents Company  
 3 as follows:

The said balance of all royalties received by it from the  
 licensees of the license agreements with the Edison Company  
 referred to in Paragraph 3, prior to the date hereof, and all  
 the other aforesaid royalties received by it up to the date  
 hereof, shall be paid to the Edison Company within thirty  
 (30) days after June 20, 1909, provided, however, that if at  
 that time the latter should be indebted to the former for  
 "Licensed Film" or other supplies purchased from or fur-  
 nished by the Eastman Company to the Edison Company  
 such royalties then in the possession of the East-  
 4 man Company shall be applied by it on account of  
 such indebtedness, the balance, if any, remaining over such  
 indebtedness, to be paid by the Eastman Company to the  
 Edison Company; and the said balance of all royalties re-  
 ceived by the Eastman Company from the "Patents Company  
 licensees" between the date hereof and June 20, 1909, and  
 all the other aforesaid royalties which have been received by  
 it between said dates, shall be paid to the Patents Company  
 within thirty (30) days after June 20, 1909, provided, how-  
 ever, that if at the time such payment of royalties is due



from the Eastman Company to the Patents Company, the Edison Company should be indebted to the Eastman Company for "Licensed Film" or other supplies purchased from or furnished by the Eastman Company to the Edison Company between the date hereof and June 20, 1909, such royalties shall be applied by it on account of said indebtedness, the balance, if any, remaining over such indebtedness, to be paid by the Eastman Company to the Patents Company, and a statement at the same time shall be given by the Eastman Company to the Patents Company of the amount of such indebtedness incurred between the date hereof and June 20, 1909, to which said royalties have been applied by it.

19. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that in case any "foreign manufacturer" aforesaid has heretofore established or shall hereafter establish a business of manufacturing and selling positive or negative motion pictures in the United States, and shall be licensed by the Patents Company, in and by a duly executed agreement in writing, the same in all substantial respects as the license agreements referred to in Paragraph 4, then, and from the time such license agreement goes into effect, and said Eastman Company is notified thereof in writing by the Patents Company, the Eastman Company shall charge to and collect from such licensee the royalties referred to in Paragraph 6 of this agreement and pay the same to the Patents Company in the same manner as that provided for in Paragraph 18 respecting the charging to and collecting from the "Patents Company licensees" of royalties upon "Licensed Film" and paying the same to the Patents Company. But no royalty shall be charged to or collected from any "foreign manufacturers" for sensitized film sold to them by the Eastman Company unless and until they have been licensed by the Patents Company and the Eastman Company notified thereof as aforesaid.

20. The Eastman Company further covenants and agrees that it will keep an accurate account of all "Licensed Film" supplied by it to the "Patents Company licensees" and other film supplied to the other persons, firms and corporations as provided for in Paragraphs 14 and 18, (with the exception of the translucent or transparent sensitized film supplied to the

1 "foreign manufacturers" unless and until such "foreign  
 manufacturers" are licensed by the Patents Company and the  
 Eastman Company is duly notified thereof as provided for in  
 Paragraph 19) with the names and addresses of the pur-  
 2 chasers and the date and amount of each purchase, and that  
 with each yearly payment of royalty as hereinbefore pro-  
 vided for it will furnish the Patents Company with a state-  
 ment in writing, verified by an officer of the Eastman Com-  
 3 pany having knowledge of the facts therein set forth (if the  
 Patents Company shall so request) showing the total  
 amounts in running feet of such "Licensed Film" and other  
 film, with the exceptions aforesaid, shipped by it to all the  
 "Patents Company licensees" and such other persons, firms  
 and corporations, and paid for by them, during the preceding  
 year; but it is further mutually covenanted and agreed that  
 the dealings between the Eastman Company and the "Patents  
 Company licensees" shall—from the date hereof, and the deal-  
 4 ings prior to the date hereof between the Eastman Company  
 and such of said licensees who are also licensees of the license  
 agreements with the Edison Company referred to in Para-  
 graph 3, insofar as the number of running feet or anything  
 that would tend to disclose the number of running feet  
 3 shipped to or ordered by them, is concerned—be a matter of  
 confidence, even as to the exclusion of the Patents Company,  
 between such licensees and such other person, firm or cor-  
 poration, as aforesaid, and the Eastman Company, and the  
 latter shall not be at liberty to disclose, directly or indirectly  
 to the Patents Company or to any of the "Patents Company  
 licensees" the number of such running feet of "Licensed  
 Film" and such other film as aforesaid, so ordered by or  
 shipped to any of the "Patents Company licensees", or such  
 other persons, firms and corporations as provided for in Para-  
 4 graphs 14 and 18; and it is therefore mutually covenanted  
 and agreed that all statements and payments of royalty from  
 the Eastman Company to the Patents Company shall be in  
 gross, without specifying the number of running feet of  
 "Licensed Film" or such other film, either by a statement of  
 the number of running feet or the amount of royalties charged  
 to and collected for or on account thereof.

21. It is further mutually covenanted and agreed by  
 and between the Patents Company and the Eastman Com-  
 pany, that if, notwithstanding the statements made by

the Eastman Company to the Patents Company, the latter should be desirous of satisfying itself by having an examination made of the books of account of the Eastman Company as to the accuracy of the statements so made to it by the Eastman Company, it may have such examination made of the books of account of the Eastman Company (so far as the same may relate to the sale by it of "Licensed Film" to the "Patents Company licensees" and such other film (with the exceptions hereinbefore provided for) to other persons, firms and corporations as provided for in Paragraph 14 and the "Patents Company licensees") by the public accountants, Price, Waterhouse & Company, of New York, N. Y., or any other public accountants that may hereafter be agreed upon by the Patents Company and the Eastman Company.

22. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that nothing herein contained shall interfere with or prevent the manufacture, sale or shipment by the Eastman Company of sensitized film suitable for the commercial production of negative or positive motion pictures, for export, without the payment of any royalty or other consideration therefor to the Patents Company, when such film, addressed to the foreign purchaser, agent or consignee, is delivered to a vessel or to a transportation company for transportation to a foreign country, and not otherwise. The Eastman Company covenants and agrees that it will use all reasonable efforts to prevent the reimportation of any such film sold for export, into the United States in an unexposed condition, and that it will not sell any such film for export for the purpose of reimporting it into the United States in an unexposed condition.

23. The Patents Company further covenants and agrees that it will, during the continuance of this agreement, license such a number of persons, firms and corporations, under said letters patent Nos. 578,185; 580,749; 586,953, 588,916; 673,329; 673,992; 707,934; 722,382; 744,251; 770,937; 771,280; 785,205 and 785,237, to make and sell exhibiting or projecting machines containing the inventions described and claimed in the same, capable of exhibiting or projecting motion pictures on film of a width greater



1 than approximately one (1) inch, and also such machines  
as will not be capable of exhibiting or projecting motion  
pictures on film of a greater width than approximately one  
(1) inch, as will be able to supply the demand for the  
same.

2 The Patents Company further covenants and agrees that  
it will not charge any such person, firm or corporation  
manufacturing and selling any such machine capable of  
exhibiting or projecting motion pictures on film of a  
greater width than approximately one (1) inch, more  
than Five (5) Dollars as a license fee for the manufac-  
3 ture and sale of each such exhibiting or projecting ma-  
chine, and that it will impose no other conditions or re-  
strictions upon the manufacture and sale of any such  
machines than that the sale and purchase thereof gives  
only the right to use them solely for exhibiting or pro-  
jecting motion pictures containing the inventions of said  
reissued letters patent No. 12,192, leased by one of the  
“Patents Company licensees” and upon payment of a roy-  
alty or rental to the Patents Company while in use, to be  
fixed by it, and while the letters patent under which they  
are licensed are owned or controlled by the Patents Com-  
4 pany, and that there shall be attached to each such ma-  
chine a plate, in a conspicuous place, showing plainly, not  
only the dates of the letters patent under which it is  
licensed, but also the aforesaid conditions and restrictions,  
and that such plate is not to be removed therefrom.

The Patents Company further covenants and agrees  
that it will not charge any person, firm or corporation  
making or selling any such machine capable of exhibiting  
or projecting motion pictures on film not wider than ap-  
proximately one (1) inch, a license fee of more than  
4 Three (3) percent of the net retail selling price of each  
such machine, and will impose no other conditions or re-  
strictions upon the manufacture and sale of any such ma-  
chines than that they be used solely for exhibiting or pro-  
jecting motion pictures on film not wider than approxi-  
mately one (1) inch in places where no admission fee is  
charged, and that there shall be attached to each such ma-  
chine a plate, in a conspicuous place, showing plainly, not  
only the dates of the letters patent under which it is li-  
censed, but also the aforesaid conditions and restrictions,  
and that such plate is not to be removed therefrom.

The Patents Company further covenants and agrees, however, that it will grant licenses to such a number of persons, firms and corporations to manufacture and sell exhibiting or projecting machines containing the inventions described and claimed in the aforesaid letters patent now owned by the Patents Company, capable of exhibiting or projecting, by reflected light, motion pictures on film of any width, but not capable of exhibiting or projecting the same by transmitted light, as will be able to supply the demand for the same, upon the payment of a royalty or license fee not to exceed Three (3) percent of the net retail selling price of each such machine, and that it will impose no other condition or restriction upon the manufacture and sale of any such machines than that they be used solely in places where no admission fee is charged, which condition shall appear on a plate to be attached to each such machine; and also that it will grant licenses to such persons, firms and corporations to manufacture and sell all such exhibiting or projecting machines referred to in this Paragraph 23, containing the inventions described and claimed in any letters patent that the Patents Company may hereafter own or control, subject to similar conditions or restrictions and upon the payment of additional license fees or royalties to be fixed by the Patents Company, the royalty or license fee, and all the conditions and restrictions of all the licenses referred to in this Paragraph 23, to be the same for all such licensees, except that such licenses may be granted to said American Mutoscope & Biograph Company and the said Armat Motion Picture Company without payment of royalty or license fees for the manufacture or sale of any such exhibiting or projecting machines; and to said Vitagraph Company of America upon its paying only four-fifths ( $\frac{4}{5}$ ) of the royalties or license fees provided for in this paragraph, on such machines, and to the Edison Company and said firm of Marvin and Casler, without paying any royalties or license fees on such machines sold *bona fide* for export.

The Patents Company further covenants and agrees that it will grant a license to the Eastman Company, upon its request, to manufacture and sell exhibiting or projecting machines containing the inventions described and claimed in the aforesaid letters patent now owned by the

- 1 Patents Company capable of exhibiting or projecting by either transmitted or reflected light motion pictures on film not wider than approximately one (1) inch, upon the payment of a royalty or license fee not to exceed three (3) per cent. of the net retail selling price of each such machine, and that it will impose no other conditions or restrictions upon the manufacture and sale of any such machines than that they be used solely in places where no admission fee is charged, and that there be attached to each such machine a plate, in a conspicuous place, showing plainly, not only the dates of the letters patent under
- 2 which it is licensed, but also said condition or restriction, and that such plate is not to be removed therefrom; and that it will also grant a license to the Eastman Company to manufacture and sell such exhibiting or projecting machines containing the inventions described and claimed in any letters patent that the Patents Company may hereafter own or control, subject to similar conditions and restrictions, and upon the payment of additional license fees or royalties to be fixed by the Patents Company, the royalty or license fees and all the conditions and restrictions of all the licenses that may be granted by the Patents
- 3 Company to manufacture and sell such exhibiting or projecting machines to be the same for the Eastman Company and all such licensees with the exceptions hereinbefore referred to in this paragraph.

24. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the Patents Company shall, within fifteen (15) days after June 20, 1909, pay to the Eastman Company twenty-four (24) percent of the gross royalties or rents collected by or paid to said Patents Company prior to
- 4 June 20, 1909, for the use of exhibiting or projecting machines capable of exhibiting or projecting motion pictures on translucent or transparent film of a greater width than approximately one (1) inch licensed by it, containing any of the inventions described and claimed in the letters patent referred to in Paragraph 4, and in any other letters patent hereafter owned or controlled by the Patents Company, and also twenty-four (24) percent of the gross royalties or rents collected by or paid to the Patents Com-



pany for the use of such machines during each year, counting from June 20, 1909, and within fifteen (15) days after the end of each such year, which shall be apportioned and paid to the "Patents Company licensees" as follows: 1

Each of such licensees shall have apportioned and paid to it by the Eastman Company, after each installment of said twenty-four (24) per cent. of said gross royalties is paid to the Eastman Company by the Patents Company, such a share thereof as the number of thousand feet of "Licensed Film" of a greater width than approximately one (1) inch ordered by and shipped to such licensee, added 2 to the number of thousand running feet of film of a greater width than approximately one (1) inch, having positive motion pictures thereon, imported by such licensee (if such licensee has imported the same) during the period for which such installment is paid to the Eastman Company, bears to the total number of thousand running feet of such "Licensed Film" ordered by and shipped to all of the "Patents Company licensees," added to the total number of running feet of film of a greater width than approximately one (1) inch having positive motion pictures thereon imported by all such licensees, during the 3 period for which said installment is paid to the Eastman Company, after deducting the amount of such "Licensed Film" of a greater width than approximately one (1) inch ordered by and shipped to the Edison Company and the American Mutoscope & Biograph Company during the period for which such installment is paid to the Eastman Company, which two latter Companies are not to share in or be paid any part of said twenty-four (24) percent of the gross royalties or rents; that such apportionment shall be made as aforesaid through Price, Waterhouse & Company, chartered accountants, or through 4 some other accountants that may hereafter be mutually agreed upon by and between the Eastman Company and the Patents Company, and the "Patents Company licensees," and the Eastman Company shall pay to the "Patents Company licensees" their respective shares of each installment of said twenty-four (24) percent of said gross royalties or rents provided for in this paragraph after receiving the same, and after the same have been so apportioned, without disclosing, directly or indirectly,

1 to the Patents Company or to any of the "Patents Com-  
pany licensees" the share apportioned or paid to any of  
such licensees; that the Patents Company shall furnish  
to the Eastman Company the number of thousand running  
feet of film of a greater width than approximately one (1)  
inch having positive motion pictures thereon imported by  
all the "Patents Company licensees" during the period for  
which each said installment is paid to the Eastman Com-  
pany, in order that the said apportionment may be made.

2 25. It is mutually covenanted and agreed by and be-  
tween the Edison Company and the Eastman Company  
that the two agreements in writing entered into by and  
between them on or about the 20th day of May, 1908, re-  
ferred to in Paragraph 8, are hereby cancelled and ter-  
minated, and each of the said parties thereto hereby re-  
leases and discharges the other party thereto of and from  
all claims and demands that it has or may have against  
the other under or rising out of each of said two agree-  
ments in writing.

3 26. It is further mutually covenanted and agreed by  
and between the Patents Company and the Eastman Com-  
pany that this agreement shall take effect January 1st,  
1909, and unless sooner terminated as hereinafter provided,  
shall continue until the expiration, on August 31, 1914, of  
the aforesaid reissued letters patent No. 12,037 and 12,192;  
it being provided, however, that either party hereto shall  
have the right at any time to terminate this agreement  
by giving sixty (60) days notice in writing to the other  
party of its election so to do. Such termination of this  
4 agreement, however, shall not prejudice either party in  
the recovery of damages because of any breach, violation  
or non-performance thereof by the other.

27. It is further mutually covenanted and agreed  
by and between the Patents Company and the Eastman  
Company that in case the Patents Company should be-  
come bankrupt, cease doing business or should be dis-  
solved, voluntarily or otherwise, or its charter should be  
repealed, the Patents Company shall immediately give no-  
tice of the same to the Eastman Company, and upon the

happening of either of such events, this agreement shall be deemed terminated and at an end by the parties hereto; and that after notice of termination of this agreement by either party, as provided for in Paragraph 26, or this paragraph, and after it is terminated, no matter what the cause or manner of termination may be, neither this agreement, nor the fact that the Eastman Company has entered into or acted under it shall be used in any manner, directly or indirectly, by or for the Patents Company, its successors, assigns or legal representatives, or by or for others, against the Eastman Company, or its successors or legal representatives, in any litigation, controversy or proceeding involving it or them, or any other persons, firms or corporations, or in any other way—it being understood and agreed that upon such termination the positions and rights of the Patents Company and the Eastman Company shall be the same as if this agreement had not been made; provided, however, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any breach or other violation of this agreement by the other occurring prior to such termination.

28. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that all notices provided for in this agreement shall be in writing and shall be given by delivering the same to an officer of the Patents Company or the Eastman Company, as the case may be, or by depositing such notice, postage prepaid, in any Post Office of the United States in a sealed envelope, directed to the Patents Company or the Eastman Company, as the case may be, at its last known Post Office address, to be forwarded by registered mail.

29. It is mutually covenanted and agreed by and between the Patents Company and the Eastman Company that this agreement shall bind and inure to the benefit of the Patents Company, its successors, assigns and legal representatives, and the Eastman Company and its successors as defined in Paragraph 10 of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers duly



- 1 authorized to perform these acts, the day and year first above written.

MOTION PICTURE PATENTS CO.,

By Frank L. Dyer,  
President.

Attest:

George F. Scull,  
[SEAL.] Secretary.

- 2 EDISON MANUFACTURING CO.,  
By Frank L. Dyer,  
Vice-President.  
EASTMAN KODAK CO.,  
By Geo. Eastman,  
[SEAL.] Treasurer.

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- 3 Mr. GROSVENOR: I offer in evidence Petitioner's Exhibit No. 134, being an agreement between the Motion Picture Patents Company and the Eastman Kodak Company of June 15th, 1909.

### **Petitioner's Exhibit No. 134.**

- 4 1. AGREEMENT made this fifteenth day of June, 1909, by and between MOTION PICTURE PATENTS COMPANY, a corporation organized and existing under the laws of the State of New Jersey and having an office at Jersey City, in said State, party of the first part (hereinafter referred to as the Patents Company), and EASTMAN KODAK COMPANY, a corporation organized and existing under the laws of the State of New York and having a place of business in the City of Rochester, in said State, party of the second part (hereinafter referred to as the Eastman Company), WITNESSETH:

2. WHEREAS, the Patents Company represents that it is organized to own, deal in and grant licenses under letters patent pertaining to the motion picture art, and that it is the

owner of all the right, title and interest in and to United States Letters Patent— 1

No. 578,185, dated March 2, 1897, for Vitascope, granted Thomas Armat;

No. 580,749, dated April 13, 1897, for Vitascope, granted Thomas Armat;

No. 586,953, dated July 20, 1897, for Phantascope, granted Charles F. Jenkins and Thomas Armat;

No. 588,916, dated August 24, 1897, for Kinetoscope, granted Charles M. Campbell as assignee of Willard G. Steward and Ellis F. Frost; 2

No. 629,063, dated July 18, 1899, for Kinetoscopic Camera, granted American Mutoscope Company as assignee of Herman Casler;

No. 673,329, dated April 30, 1901, for Kinetoscope, granted The American Vitagraph Company as assignee of Albert E. Smith;

No. 673,992, dated May 14, 1901, for Vitascope, granted Thomas Armat;

No. 707,934, dated August 26, 1902, for Projecting Kinetoscope, granted E. & H. T. Anthony as assignee of Woodville Latham; 3

No. 722,382, dated March 10, 1903, for Animated Picture Apparatus, granted American Mutoscope & Biograph Company as assignee of John A. Pross;

No. 744,251, dated November 17, 1903; for Kinetoscope, granted Albert E. Smith;

No. 770,937, dated September 27, 1904, for Kinetoscope, granted The Vitagraph Company of America as assignee of Albert E. Smith;

No. 771,280, dated October 4, 1904, for Winding Reel, granted Albert E. Smith; 4

No. 785,205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted The Vitagraph Company of America as assignee of William Ellwood, and

No. 785,237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted The Vitagraph Company of America as assignee of Albert E. Smith;

all of which said letters patent relate to improvements in the motion picture art, and that there are no outstanding licenses, shop rights, or other rights under said letters patent,

1 or either of them, except licenses granted by the Patents  
 Company to certain persons, firms and corporations to manu-  
 2 facture and sell exhibiting or projecting machines and to  
 others to use such machines containing the inventions, or  
 some of them, of said letters patent, a license for Parlor  
 Kinetoscopes under letters patent Nos. 578,185, 580,749, 586,-  
 953 and 673,992, and certain alleged licenses under U. S.  
 letters patents No. 586,953, which are in dispute, and except-  
 ing a license granted by the American Mutoscope & Biograph  
 Company to the firm of Marvin and Casler to manufacture  
 and sell cameras and exhibiting or projecting machines under  
 3 letters patent owned by it (some of which are hereinbefore  
 referred to) for use in foreign countries only, and except-  
 ing certain licenses granted by the Armat Motion Picture  
 Company to the American Mutoscope & Biograph Company  
 under letters patent Nos. 578,185, 580,749, 586,953, 588,916  
 and 673,992, and by the latter Company to the former Com-  
 pany under letters patent Nos. 707,934 and 722,382, which li-  
 censes, however, are by agreement between said parties sus-  
 pended, and are not to be acted upon until the Patents Com-  
 pany becomes bankrupt, ceases doing business or shall be dis-  
 solved, voluntarily or otherwise, or its Charter shall be re-  
 pealed; and

3. WHEREAS, the Patents Company further represents  
 that it is the owner of all the right, title and interest in and to  
 reissued letters patent of the United States No. 12,037 dated  
 September 30, 1902, and No. 12,192, dated January 12, 1904,  
 the original letters patent whereof are No. 589,168, and dated  
 August 31, 1897; and

4. WHEREAS, the Patents Company further repre-  
 4 sents that it has licensed Pathe Freres, a New Jersey  
 corporation, the Edison Manufacturing Company, also a  
 New Jersey Corporation, the Biograph Company, a New  
 Jersey corporation, the Kalem Company of New York,  
 The Vitagraph Company of America, of New York, the  
 Essanay Company, of Chicago, Illinois, the Selig Polyscope  
 Company, of Chicago, George Kleine, of Chicago, Illinois,  
 and the Lubin Manufacturing Company, of Philadelphia,  
 Pennsylvania, by agreements in writing which took effect  
 January 1st, 1909, to manufacture, print and produce posi-  
 tive motion pictures embodying the inventions of said re-



issued letters patent No. 12,192, and to lease the same in  
 the United States, its territories, dependencies and posses-  
 sions (with the exception of its insular possessions and  
 Alaska, therein referred to as the "lease territory") on  
 film of a greater width than approximately one (1) inch,  
 upon condition that they be used solely in exhibiting or  
 projecting machines licensed by the Patents Company for  
 the use of which a royalty or rent is paid by the user there-  
 of while in use containing the inventions, or some of  
 them, of said letters patent Nos. 578,185; 580,749; 586,953;  
 588,916; 673,329; 673,992; 722,934; 722,382; 744,251; 770,  
 937; 771,280; 785,205; and 785,237; and to sell positive  
 motion pictures containing the inventions of said reissued  
 letters patent No. 12,192, on film of a width ap-  
 proximately one (1) inch or less in said "lease terri-  
 tory" and on film of any width in and for said insular  
 possessions and Alaska and foreign countries, and with  
 the exception of George Kleine to manufacture and use in  
 the United States, its territories and possessions (herein-  
 after referred to as the "territory aforesaid") cameras or  
 apparatus embodying the inventions of said reissued let-  
 ters patent No. 12,037, and letters patent Nos. 629,063, and  
 707,934, all of which license agreements are upon substan-  
 tially the same terms and conditions, except that the Edi-  
 son Manufacturing Company is not to pay any royalties to  
 the Patents Company, and except that George Kleine is  
 prevented from manufacturing negative motion pictures in  
 the "territory aforesaid" and from manufacturing from  
 imported negative motion pictures, positive motion pic-  
 tures, and importing in all more positive motion pictures  
 than a certain number of thousand feet per week; and that  
 the Patents Company may hereafter have other licensees  
 (said licensees which it now has or may hereafter have  
 being referred to hereinafter, for brevity, as the "Patents  
 Company licensees"); and that in case the Patents Com-  
 pany should become bankrupt, cease doing business or  
 should be dissolved, voluntarily or otherwise, or its Char-  
 ter should be repealed, then, on the happening of either of  
 such events, the Patents Company is to forthwith assign  
 to the Edison Manufacturing Company, its successors and  
 assigns, the entire right, title and interest in and to said  
 reissued letters patent Nos. 12,037 and 12,192, and the  
 inventions therein set forth, together with all claims and

- 1 demands, both at law and in equity, for infringements of  
said reissued letters patent, or either of them; and

2 5. WHEREAS, the Patents Company further repre-  
sents that in and by the license agreements aforesaid with  
it, the licensees named therein are entitled to receive from  
the Patents Company a share of twenty-four (24) per cent.  
of the annual gross royalties or rents collected by or  
paid to the Patents Company for the use of all exhibiting  
or projecting machines containing any of the inventions  
described and claimed in the letters patent referred to  
in Paragraph 4, which twenty-four (24) per cent. of said  
annual gross royalties or rents shall be paid to the East-  
man Company and the shares thereof to which said licens-  
ees are entitled shall be apportioned to and paid to such  
licensees by the Eastman Company as hereinafter pro-  
vided; and

3 6. WHEREAS, the Patents Company further repre-  
sents that in and by the license agreements aforesaid with  
it the licensees named therein are each obligated to use  
exclusively, in the manufacture, in the "territory afore-  
said," of motion pictures made on translucent or trans-  
parent sensitized film, film designated in said agreements  
as "Licensed Film" manufactured and sold by a film manu-  
facturer or manufacturers under an agreement in writing  
with the Patents Company; each of said license agreements  
further providing for the collection from the licensee named  
therein by such manufacturer or manufacturers of the  
following royalty or royalties for such "Licensed Film" of  
a width approximately one inch and three-eighths of an  
inch ( $1\frac{3}{8}$  in.) purchased by said licensee during the year  
preceding June 20th, 1909, and during any year, counting  
from June 20th, 1909, during the continuance of the license  
agreement, and up to August 31, 1914, that is to say;—  
4 If such shipments of such "Licensed Film" to the licensee,  
on the orders of such licensee, for any such year, be four  
million running feet or less, a royalty of one-half ( $\frac{1}{2}$ ) cent  
per running foot on the total number of running feet for  
that year; if such shipments, on the orders of such licensee,  
of such "Licensed Film," for any such year, exceed four  
million running feet, but do not exceed six million running  
feet, a royalty of four and one-half ( $4\frac{1}{2}$ ) mills per running



foot on the total number of running feet for that year; if such shipments, on the orders of such licensee, of such "Licensed Film," for any such year, exceed six million running feet, but do not exceed eight million running feet, a royalty of four (4) mills per running foot on the total number of running feet for that year; if such shipments, on the orders of such licensee, of such "Licensed Film," for any such year, exceed eight million running feet, but do not exceed ten million running feet, a royalty of three and three-quarter ( $3\frac{3}{4}$ ) mills per running foot on the total number of running feet for that year; and if such shipments, on the orders of such licensee, of such "Licensed Film," for any such year, exceed ten million running feet, a royalty of three and one-quarter ( $3\frac{1}{4}$ ) mills per running foot for the total number of running feet for that year. And for "Licensed Film" narrower or wider than approximately one and three-eighths of an inch ( $1\frac{3}{8}$  in.) or thirty-five (35) millimetres, the above mentioned royalties shall be reduced or increased in proportion to their reduction or increase for such narrower or wider film below or above the royalty on said "Licensed Film" of a width approximately one and three-eighths of an inch ( $1\frac{3}{8}$  in.) or thirty-five (35) millimetres; and

7. WHEREAS, the Eastman Company represents that it has for many years past manufactured by secret processes and embodying secret compositions and patented inventions at said City of Rochester, State of New York, sensitized translucent or transparent film (having a nitrocellulose base) suitable for use in the commercial manufacture, printing and production of negative and positive motion pictures, and has sold the same in the "territory aforesaid" and in foreign countries, the parties to the license agreements referred to in Paragraph 4 (with the exception of George Kleine) having been some of its customers therefor, and that it has special facilities for the manufacture of such film; and has entered into an agreement in writing dated on or about the 1st day of January, 1909, with the Patents Company, respecting, among other things, the supplying of such "Licensed Film" (having a nitrocellulose base) to persons, firms and corporations who have been licensed by the Patents Company under said reissued letters patent No. 12,192, and the collecting there-



1 from of the royalties referred to in Paragraph 6 and the  
 paying of the same to the Patents Company in a certain  
 manner, a copy of which agreement is hereunto annexed  
 marked "SCHEDULE A"; and

2 8. WHEREAS, the Eastman Company represents that  
 it has for some time past been carrying on experiments to  
 produce and is now manufacturing, by secret processes and  
 embodying secret compositions, at said City of Rochester,  
 State of New York, non-inflammable sensitized motion pic-  
 2 ture film (having a cellulose acetate base instead of a nitro-  
 cellulose base) suitable for use in the commercial manu-  
 facture, printing and production of negative and positive  
 motion pictures; and

3 9. WHEREAS, the Patents Company, not being a manu-  
 facturer of such non-inflammable sensitized motion pic-  
 ture film, is desirous of availing itself of the manufacturing  
 facilities of the Eastman Company by having it manufac-  
 ture such film (having a cellulose acetate base) by its  
 secret processes and embodying its secret compositions, and  
 supply such film to the Patents Company licensees, and is  
 3 also desirous of having the Eastman Company collect from  
 the latter, for payment to the Patents Company, the royal-  
 ties referred to in Paragraph 6 of this agreement, and to  
 collect from the other persons, firms and corporations, as  
 provided for in Paragraph 13 for payment to the Patents  
 Company, the royalties provided for in Paragraph 17:

NOW, THEREFORE, the parties hereto, for and in con-  
 sideration of the sum of one dollar by each paid to the other,  
 the receipt of which is hereby acknowledged, and for other  
 good and valuable considerations from each to the other  
 4 moving, including the covenants and agreements hereinafter  
 entered into by them, covenant and agree as follows:

10. The Patents Company hereby grants to the Eastman  
 Company, and the latter accepts, for the term and subject to  
 the covenants, conditions and stipulations hereinafter ex-  
 pressed, the sole and exclusive right and authority, for the  
 "territory aforesaid", to manufacture the "Licensed Film"  
 aforesaid (having a cellulose acetate base and hereinafter  
 called "N. I. Licensed Film") and also other non-inflammable  
 sensitized motion picture film suitable for the production

commercially of positive and negative motion pictures, and  
 sell such "N. I. Licensed Film" to the "Patents Company li-  
 censees", and such other film to other persons, firms and cor-  
 porations provided for in Paragraph 13 the right and author-  
 ity hereby granted to the Eastman Company being sole and  
 exclusive, even as to the Patents Company, in the "territory  
 aforesaid", but, except as hereinafter provided, strictly  
 limited to the manufacture of such "N. I. Licensed Film"  
 and such other film and the sale of such "N. I. Licensed Film"  
 to the "Patents Company licensees", and the sale of such  
 other film to said other persons, firms and corporations, and  
 not including any right to the Eastman Company, to manu-  
 facture, use or sell, in the "territory aforesaid", motion pic-  
 ture cameras embodying any invention covered by said re-  
 issued patent No. 12,037 and said letters patent numbers  
 629,063 and 707,934, except that the Eastman Company may  
 and is hereby given the right to use such motion picture cam-  
 eras as it may desire for its own use, including film testing;  
 and it being further provided that the right and authority  
 hereby granted is personal to, and not assignable or other-  
 wise transferable in whole or in part, by the Eastman Com-  
 pany, which shall have no right to delegate any part thereof,  
 or grant any right or privilege whatsoever thereunder or  
 under either of said reissued letters patent Nos. 12,037 and  
 12,192, and letters patent Nos. 629,063 and 707,934, to any  
 person, firm or corporation, unless the said Eastman Com-  
 pany should dispose of its entire motion picture film business  
 to a single purchaser, in which case it may assign the right  
 and authority hereby granted to it, together with all its  
 rights under this agreement, to such purchaser, who shall  
 then and thereafter be recognized and dealt with by the Pat-  
 ents Company as the successor of the Eastman Company in  
 the ownership of said right and authority and all other rights  
 of the Eastman Company under this agreement and be en-  
 titled to all the benefits and privileges thereof; but before  
 any such purchaser shall be recognized as such assignee and  
 successor of the Eastman Company, said purchaser shall first  
 agree in writing to accept, act under, and perform the cove-  
 nants, stipulations and conditions of this agreement.

11. The Patents Company covenants and agrees to promptly notify the Eastman Company of the names and addresses of all the "Patents Company licensees" to whom it

1 has granted or may hereafter grant licenses, and of the dates when their license agreements take effect, in order that the Eastman Company may be advised as to whom it is to charge the royalty as hereinafter provided, and also be able to compute the same, and also covenants and agrees to promptly notify the Eastman Company of the revocation, cancellation or termination otherwise of any license agreements with the "Patents Company licensees" so that the Eastman Company may know that such license agreements have been terminated.

2 12. The Patents Company further authorizes and empowers the Eastman Company to charge to and collect from each of the "Patents Company licensees" to whom the Eastman Company supplies such "N. I. Licensed Film", and pay over to it (said Patents Company), in the manner hereinafter provided for, the royalties referred to in paragraph 6 of this agreement.

3 13. The Eastman Company covenants and agrees that, during the continuance of this agreement it will fill all orders for the "N. I. Licensed Film" aforesaid received by it from any of the "Patents Company licensees" (who have made or who may hereafter make an agreement with it, the same in all substantial respects as the one hereto annexed marked SCHEDULE B, and which the Patents Company hereby represents and agrees it has authorized and will authorize each said licensee to make) with reasonable diligence and at the prices hereinafter provided for, on condition, however, that if the total amount of non-inflammable sensitized motion picture film, suitable for the commercial production of negative and positive motion pictures, required by its several customers in the United States and in countries foreign thereto, should at any time during the continuance of this agreement, exceed its output of such film, then in such case each "Patents Company licensee" shall be entitled only to the same proportion of its output of such film that such licensee had of its total output of sensitized motion picture film the previous calendar year, and will manufacture all such "N. I. Licensed Film" by its secret processes and will embody therein its secret compositions, and that it will not, after the date hereof, and during the continuance of this agreement, knowingly furnish or sell, in the "territory afore-

4



said," except for export, as hereinafter provided for, such 1  
 non-inflammable sensitized motion picture film for the  
 commercial production of negative and positive motion pic-  
 tures to anyone but the "Patents Company licensees," ex-  
 cept to the extent of two and one half ( $2\frac{1}{2}$ ) per cent. of  
 the total amount of such "N. I. Licensed Film" supplied to  
 the "Patents Company licensees" from the date hereof to  
 June 20, 1909, and to said "Patents Company licensees"  
 during any one year, counting from June 20, 1909, of the  
 continuance of this agreement, which amount, of a width  
 approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$ ) 2  
 the Eastman Company (by and with the consent and au-  
 thority of the Patents Company, which it hereby grants)  
 reserves the right to furnish or supply to persons not en-  
 gaged in the business of manufacturing, selling, loaning,  
 renting out or otherwise disposing of or dealing in mo-  
 tion pictures in the "territory aforesaid;" and with the  
 further exception that the Eastman Company (by and  
 with the consent and authority of the Patents Company,  
 which it hereby grants) reserves the right to manufacture  
 and sell such non-inflammable sensitized motion picture  
 film of a width not to exceed approximately one (1) inch 3  
 in the "territory aforesaid" to persons, firms and corpora-  
 tions engaged in the business of manufacturing, selling,  
 loaning, renting out or otherwise disposing of or dealing  
 in motion pictures in the "territory aforesaid" upon con-  
 dition, however, that in case any of them produces thereon  
 any picture greater in size than approximately three-quar-  
 ters ( $\frac{3}{4}$ ) of an inch, on a line either parallel to or at  
 right angles to the edge of said film, and the Eastman  
 Company has knowledge thereof, it will cease supplying  
 such film to any such person, firm or corporation; and with  
 the further express exception that the Eastman Company 4  
 (by and with the consent and authority of the Patents  
 Company, which it hereby grants) reserves the right to  
 manufacture and sell, in the "territory aforesaid," such  
 non-inflammable sensitized motion picture film of any  
 width to persons, firms and corporations (not "Patents  
 Company licensees") who had prior to January 1st, 1909,  
 an established business of manufacturing motion pictures  
 in any country foreign to the United States (hereinafter,  
 for brevity, called "foreign manufacturers"), who now  
 manufacture negative or positive motion pictures in the

- 1 United States, or who may, after the date of this agreement, commence the manufacture of negative and positive motion pictures in the United States, and also to any person, firm or corporation who is now or may hereafter be one of the "Patents Company licensees" and who shall have ceased to be such a licensee; but such film so sold to "foreign manufacturers" and ex-licensees shall not be considered as licensed by the Patents Company for use in the manufacture of motion pictures, nor shall any royalty be charged or collected therefor by the Eastman Company.

2

14. The Eastman Company further covenants and agrees that it will mark conspicuously on each box or package containing such "N. I. Licensed Film," supplied by it to the "Patents Company licensees," the following words and figures:

"N. I. Licensed Film

Licensed for Use Only by Licensees

of the

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Motion Picture Patents Company."

15. It is mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the maximum prices to be charged by the Eastman Company to the "Patents Company licensees" during the continuance of this agreement shall be three and one-half ( $3\frac{1}{2}$ ) cents net per running foot for non-perforated "N. I. Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and three and three-quarters ( $3\frac{3}{4}$ ) cents net
- 4 per running foot for perforated "N. I. Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width (which prices shall be reduced or increased in proportion to the reduction or increase in width of narrower or wider "N. I. Licensed Film" than that approximately one inch and three-eighths of an inch [ $1\frac{3}{8}$  in.] in width) plus the royalties referred to in Paragraph 6 of this agreement, which are to be charged to the "Patents Company licensees" (except to the Edison Manufacturing Company); it being further covenanted and agreed, however, that the Eastman

Company may reduce these prices of three and one-half ( $3\frac{1}{2}$  and three and three-quarters ( $3\frac{3}{4}$ ) cents, respectively, if it should consider it commercially desirable to do so, but in no case shall it reduce the aforesaid royalties to be charged to and collected by it from the "Patents Company licensees" for the Patents Company, without the consent of the latter

16. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the royalties referred to in Paragraph 6 of this agreement shall not be charged by the Eastman Company to the Edison Manufacturing Company, but that the maximum prices to be charged by the Eastman Company to said Edison Manufacturing Company shall be (unless reduced as provided for in Paragraph 15, when the Edison Manufacturing Company shall have the benefit of such reduced price) three and one-half ( $3\frac{1}{2}$ ) cents net per running foot for non-perforated "N. I. Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and three and three-quarters ( $3\frac{3}{4}$ ) cents net per running foot for perforated "N. I. Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, which prices shall be reduced or increased in proportion to the reduction or increase in width of narrower or wider "N. I. Licensed Film" than that approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width.

17. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company, that on each sale of "N. I. Licensed Film" to the "Patents Company licensees" (with the exception of the Edison Manufacturing Company), the Eastman Company shall, in the first instance, that is to say, when such "N. I. Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, is billed and shipped by it, charge the licensees with its price of three and one-half ( $3\frac{1}{2}$ ) cents or three and three-quarters ( $3\frac{3}{4}$ ) cents, as the case may be, per running foot, plus the maximum royalty of five (5) mills per running foot, referred to in Paragraph 6 of this agreement, and on the expiration of each year, counting from June 20, 1909, shall adjust the royalty account of each licensee as to "N. I. Licensed Film," so billed and shipped to



- 1 them and paid for by them, according to the royalty schedule  
set forth in said Paragraph 6, returning to the licensee any  
amount such licensee may have overpaid, according to said  
schedule, and paying the balance to the Patents Company;  
and that on each sale of the other non-inflammable sensi-  
tized motion picture film of a width approximately one inch  
and three-eighths of an inch ( $1\frac{3}{8}$  in.) to the amount of two  
and one-half ( $2\frac{1}{2}$ ) per cent. of the total amount of "N. I.  
Licensed Film" supplied to the "Patents Company licensees"  
during any one year, counting from June 20, 1909, of the  
continuance of this agreement, to persons not engaged in
- 2 the business of manufacturing, selling, loaning, renting out  
or otherwise disposing of or dealing in motion pictures in  
the "territory aforesaid," as provided for in Paragraph 13,  
the Eastman Company shall in the price charged for such  
film to the purchaser include a royalty of one-half ( $\frac{1}{2}$ ) cent  
per running foot, and which royalty the Eastman Company  
is to pay to the Patents Company on such film sold by it  
which is paid for by the purchaser thereof; and on each  
sale of said other film which is not to exceed approximately  
one inch (1 in.) in width, as provided for in Paragraph 13,  
the Eastman Company shall include in the price charged
- 3 for such film to the purchaser thereof a royalty amounting  
to such proportion of one-half ( $\frac{1}{2}$ ) cent per running foot  
as the width of such film bears to the film approximately  
one and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and  
which royalty the Eastman Company is to pay to the Pat-  
ents Company on such film sold by it which is paid for by  
the purchaser thereof; such adjustment and payments to the  
licensees and the Patents Company to be made by the East-  
man Company within thirty (30) days after the expiration  
of each such year, counting from June 20, 1909; it being
- 4 provided, however, that during the continuance of the afore-  
said agreement of January 1, 1909, the Eastman Company  
shall include in the adjustment and payments aforesaid  
such film having a nitrocellulose base as may have been  
billed and shipped or sold to and paid for by the licensees  
or purchasers aforesaid and on which it has charged and  
collected the royalty provided for in said agreement, said  
agreement being modified to this extent; and it being fur-  
ther provided that if, at the time such payment of royalties  
is due from the Eastman Company to the Patents Company,  
the Edison Manufacturing Company should be indebted to

the Eastman Company for "N. I. Licensed Film" or "Licensed Film" with a nitrocellulose base or other supplies purchased from or furnished by the Eastman Company to the Edison Manufacturing Company during such year, the royalties shall be applied by it on account of such indebtedness, the balance, if any, remaining over such indebtedness, to be paid by the Eastman Company to the Patents Company, and a statement at the same time shall be given by the Eastman Company to the Patents Company of the amount of such indebtedness incurred after June 20, 1909, to which said royalties have been applied by it.

18. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that in case any "foreign manufacturer" aforesaid has heretofore established or shall hereafter establish a business of manufacturing and selling positive or negative motion pictures in the United States, and shall be licensed by the Patents Company in and by a duly executed agreement in writing, the same in all substantial respects as the license agreements referred to in Paragraph 4, then, and from the time such license agreement goes into effect, and said Eastman Company is notified thereof in writing by the Patents Company, the Eastman Company shall charge to and collect from such licensee the royalties referred to in Paragraph 6 of this agreement and pay the same to the Patents Company in the same manner as that provided for in Paragraph 17 respecting the charging to and collecting from the "Patents Company licensees" of royalties upon "N. I. Licensed Film" and paying the same to the Patents Company.

19. The Eastman Company further covenants and agrees that it will keep an accurate account of all "N. I. Licensed Film" supplied by it to the "Patents Company licensees" and other non-inflammable sensitized motion picture film supplied to the other persons, firms and corporations as provided for in Paragraphs 13 and 17, (with the exception of that supplied to ex-licensees and to "foreign manufacturers" who are not "Patents Company licensees") with the names and addresses of the purchasers and the date and amount of each purchase, and that with each yearly payment of royalty as hereinbefore provided for it will furnish the Patents Company with a statement in writing, verified by an officer



1 of the Eastman Company having knowledge of the facts  
 therein set forth (if the Patents Company shall so request)  
 showing the total amount in running feet of such "N. I.  
 Licensed Film" and said other film, shipped by it to all the  
 "Patents Company licensees" and said other persons, firms  
 and corporations (other than the ex-licensees and non-li-  
 censed "foreign manufacturers" just referred to) and paid  
 for by them, during the preceding year, including in such  
 account and statement, during the continuance of the afore-  
 said agreement of January 1, 1909, such film having a nitro-  
 cellulose base as may have been shipped to and paid for by  
 2 the "Patents Company licensees" and said other persons,  
 firms and corporations to whom it has been charged and  
 from whom it has collected the royalty provided for in said  
 agreement, said agreement being modified to this extent; but  
 it is further mutually covenanted and agreed that the deal-  
 ings between the Eastman Company and the "Patents Com-  
 pany licensees" shall,—from the date hereof, insofar as the  
 number of running feet or anything that would tend to dis-  
 close the number of running feet shipped to or ordered by  
 them, is concerned,—be a matter of confidence, even to the  
 3 exclusion of the Patents Company, between such licensees  
 and such other person, firm or corporation, as aforesaid, and  
 the Eastman Company, and the latter shall not be at liberty  
 to disclose, directly or indirectly, to the Patents Company  
 or to any of the "Patents Company licensees" the number of  
 such running feet of film so ordered by or shipped to any of  
 the "Patents Company licensees," or such other persons,  
 firms and corporations other than ex-licensees and non-li-  
 censed "foreign manufacturers" just referred to, and it is  
 therefore mutually covenanted and agreed that all state-  
 ments and payments of royalty from the Eastman Company  
 4 to the Patents Company shall be in gross, without specify-  
 ing the number of running feet of film, either by a statement  
 of the number of running feet or the amount of royalties  
 charged to and collected for or on account thereof.

20. It is further mutually covenanted and agreed by and  
 between the Patents Company and the Eastman Company,  
 that if, notwithstanding the statements made by the East-  
 man Company to the Patents Company, the latter should be  
 desirous of satisfying itself by having an examination made  
 of the books of the Eastman Company as to the accuracy of



the statements so made to it by the Eastman Company, it may have such examination made of the books of account of the Eastman Company so far as the same may relate to the sale by it of film to the "Patents Company licensees" and all other persons, firms and corporations, except ex-licensees and non-licensed "foreign manufacturers" hereinbefore referred to by the public accountants, Price, Waterhouse & Company, of New York, N. Y., or any other public accountants that may hereafter be agreed upon by the Patents Company and the Eastman Company.

21. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that nothing herein contained shall interfere with or prevent the manufacture, sale or shipment, for export, by the Eastman Company, of sensitized non-inflammable motion picture film suitable for the commercial production of negative or positive motion pictures, without the payment of any royalty or other consideration therefor to the Patents Company, when such film addressed to the foreign purchaser, agent or consignee, is delivered to a vessel or to a transportation company for transportation to a foreign country, and not otherwise. The Eastman Company covenants and agrees that it will use all reasonable efforts to prevent the reimportation of any such film sold for export, into the United States in an unexposed condition and that it will not sell any such film for export for the purpose of reimporting it into the United States in an unexposed condition.

22. The Patents Company further covenants and agrees that it will, during the continuance of this agreement, license such a number of persons, firms and corporations, under said letters patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, to make and sell exhibiting or projecting machines containing the inventions described and claimed in the same capable of exhibiting or projecting motion pictures on film of a width greater than approximately one (1) inch, and also such machines as will not be capable of exhibiting or projecting motion pictures on film of a greater width than approximately one (1) inch, as will be able to supply the demand for the same.

The Patents Company further covenants and agrees that

- 1 it will not charge any such person, firm or corporation manu-  
 facturing and selling any such machine capable of exhibiting  
 or projecting motion pictures on film of a greater width than  
 approximately one (1) inch, more than Five (5) Dollars as a  
 license fee for the manufacture and sale of each such ex-  
 hibiting or projecting machine, and that it will impose no  
 other conditions or restrictions upon the manufacture and  
 sale of any such machines than that the sale and purchase  
 thereof gives only the right to use them solely for exhibiting  
 or projecting motion pictures containing the inventions of  
 2 said reissued letters patent No. 12,192, leased by one of the  
 "Patents Company licensees" and upon payment of a royalty  
 or rental to the Patents Company while in use, to be fixed  
 by it, and while the letters patent under which they are li-  
 censed are owned or controlled by the Patents Company,  
 and that there shall be attached to each such machine a plate,  
 in a conspicuous place, showing plainly, not only the date of  
 the letters patent under which it is licensed, but also the  
 aforesaid conditions and restrictions, and that such plate is  
 not to be removed therefrom.

- 3 The Patents Company further covenants and agrees that  
 it will not charge any person, firm or corporation making  
 or selling any such machine capable of exhibiting or pro-  
 jecting motion pictures on film not wider than approxi-  
 mately one (1) inch, a license fee of more than three (3)  
 per cent. of the net retail selling price of each such ma-  
 chine, and will impose no other conditions or restrictions  
 upon the manufacture and sale of any such machines than  
 that they be used solely for exhibiting or projecting motion  
 pictures on film not wider than approximately one (1) inch  
 in places where no admission fee is charged, and that there  
 shall be attached to each such machine a plate, in a con-  
 4 spicuous place, showing plainly, not only the dates of the  
 letters patent under which it is licensed, but also the afore-  
 said conditions and restrictions, and that such plate is not  
 to be removed therefrom.

The Patents Company further covenants and agrees, however, that it will grant licenses to such a number of persons, firms and corporations to manufacture and sell exhibiting or projecting machines containing the inventions described and claimed in the aforesaid letters patent now owned by the Patents Company, capable of exhibiting or projecting, by reflected light, motion pictures on film of

any width, but not capable of exhibiting or projecting the same by transmitted light, as will be able to supply the demand for the same, upon the payment of a royalty or license fee not to exceed three (3) per cent. of the net retail selling price of each such machine, and that it will impose no other condition or restriction upon the manufacture and sale of any such machines than that they be used solely in places where no admission fee is charged, which condition shall appear on a plate to be attached to each such machine; and also that it will grant licenses to such persons, firms and corporations to manufacture and sell all such exhibiting or projecting machines referred to in this Paragraph 22, containing the inventions described and claimed in any letters patent that the Patents Company may hereafter own or control, subject to similar conditions or restrictions and upon the payment of additional license fees or royalties to be fixed by the Patents Company, the royalty or license fee, and all the conditions and restrictions of all the licenses referred to in this Paragraph 22, to be the same for all such licensees, except that such licenses may be granted to said Biograph Company and the said Armat Motion Picture Company without payment of royalty or license fees for the manufacture or sale of any such exhibiting or projecting machines; and to said Vitagraph Company of America upon its paying only four-fifths (4-5ths) of the royalties or license fees provided for in this paragraph, on such machines, and to the Edison Manufacturing Company and said firm of Marvin and Casler, without paying any royalties or license fees on such machines sold *bona fide* for export.

23. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the Patents Company shall, within fifteen days after June 20, 1909, pay to the Eastman Company twenty-four (24) per cent. of the gross royalties or rents collected by or paid to said Patents Company prior to June 20, 1909, for the use of exhibiting or projecting machines capable of exhibiting or projecting motion pictures on translucent or transparent film of a greater width than approximately one (1) inch licensed by it, containing any of the inventions described and claimed in the letters patent referred to in Paragraph 4, and in any other letters



1 patent hereafter owned or controlled by the Patents Com-  
pany, and also twenty-four (24) per cent. of the gross  
royalties or rents collected by or paid to the Patents Com-  
pany for the use of such machines during each year, count-  
ing from June 20, 1909, and within fifteen (15) days  
from the end of each such year, the money so paid to the  
Eastman Company shall be apportioned and hereafter  
paid to the "Patents Company licensees" as follows:

Each such licensee shall have apportioned and paid to  
it by the Eastman Company, after each installment of  
said twenty-four per cent. (24%) of said gross royalties  
2 is paid to the Eastman Company by the Patents Company,  
such a share thereof as the number of thousand feet of  
film (whether "N. I. Licensed Film" or "Licensed Film"  
supplied under the aforesaid agreement of January 1, 1909,  
which is modified to this extent) of a greater width than  
approximately one (1) inch ordered by and shipped to  
such licensee, added to the number of thousand running  
feet of film of a greater width than approximately one (1)  
inch having positive motion pictures thereon, imported by  
such licensee (if such licensee has imported the same)  
3 during the period for which such installment is paid to  
the Eastman Company, bears to the total number of thou-  
sand running feet of such film ordered by and shipped  
to all of the "Patents Company licensees," added to the  
total number of running feet of film of a greater width  
than approximately one (1) inch having positive motion  
pictures thereon imported by all such licensees, during  
the period for which said installment is paid to the East-  
man Company, after deducting the amount of such film of  
a greater width than approximately one (1) inch ordered  
by and shipped to the Edison Company and the Biograph  
4 Company during the period for which such installment is  
paid to the Eastman Company, which two latter Com-  
panies are not to share in or be paid any part of said  
twenty-four (24) per cent. of the gross royalties or rents;  
that such apportionment shall be made as aforesaid through  
Price, Waterhouse & Company, chartered accountants, or  
through some other accountants that may hereafter be  
mutually agreed upon by and between the Eastman Com-  
pany and the Patents Company, and the "Patents Company  
licensees," and the Eastman Company shall pay to the  
"Patents Company licensees" their respective shares of

each installment of said twenty-four per cent. (24%) of said gross royalties or rents provided for in this paragraph after receiving the same, and after the same have been so apportioned, without disclosing, directly or indirectly, to the Patents Company or to any of the "Patents Company licensees" the share apportioned or paid to any of such licensees; that the Patents Company shall furnish to the Eastman Company a statement of the number of thousand running feet of such film of a greater width than approximately one (1) inch having positive motion pictures thereon imported by all the "Patents Company licensees" during the period for which each said installment is paid to the Eastman Company, in order that the said apportionment may be made.

24. That in case the Eastman Company should be, at any time during the continuance of this agreement, wholly or partly unable to supply the "Patents Company licensees" with "N. I. Licensed Film," then and in such case the number of running feet of film which the "Patents Company licensees" shall, during and to the extent of such inability, necessarily obtain from other manufacturers designated by the Patents Company, shall be ascertained by the Patents Company, and reported by it to the Eastman Company who shall add it to the film actually shipped by it to such "Patents Company licensees" and paid for by them for the purpose of adjusting the rates of royalty provided for in paragraph 17 and making the apportionment, provided for in paragraph 23.

25. That in case the Eastman Company fails, and continues to fail for a period of twenty (20) days, to supply "N. I. Licensed Film" in the quantities required by the "Patents Company licensees," for actual use in the manufacture, in the "territory aforesaid," of motion pictures, the Patents Company may designate some other manufacturer or manufacturers of film from whom the "Patents Company licensees" may then purchase non-inflammable "Licensed Film" to complete their immediate requirements, month by month only, until such time as the Eastman Company can supply said film; but if the Eastman Company should fail for a continuous period of one hundred and twenty days to furnish such "N. I. Licensed Film" to the "Patents

- 1 Company licensees" in quantities required by the latter for actual use in the manufacture, in the "territory afore-said," of motion pictures (provided such quantity for any such licensee does not exceed twenty-five per cent (25%) more than such licensee had received from the Eastman Company during a simliar period immediately preceding said one hundred and twenty (120) days, then the Patents Company may designate some other manufacturer or manufacturers in place of or in addition to the Eastman Company to supply "N. I. Licensed Film" to the "Patents Company licensees," and the Eastman Company shall then
- 2 be at liberty to manufacture non-inflammable sensitized motion picture film and sell the same in the "territory afore-said" to any person, firm or corporation other than "Patents Company licensees" wishing to purchase the same, but it shall not be obligated to collect for and pay to the Patents Company the royalty hereinbefore provided for on such film, except on such film as it may sell to the "Patents Company licensees," and insofar as such film may be sold to others than such licensees, such film shall not be considered as licensed by the Patents Company for use in
- 3 the manufacture of motion pictures.

26. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the Eastman Company shall not be responsible for damages for any failure to fill all orders for "N. I. Licensed Film" to the "Patents Company licensees" other than the proportion each "Patents Company licensee" is entitled to as defined in Paragraph 13, or for any failure to fill such orders by circumstances or happenings beyond its control.

- 4 27. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that this agreement shall take effect June 20, 1909, and unless sooner terminated as hereinafter provided, shall continue until July 1, 1912.

28. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that in case the Patents Company should become bankrupt, cease doing business or should be dissolved, voluntarily or



otherwise, or its charter should be repealed, the Patents Company shall immediately give notice of the same to the Eastman Company, and upon the happening of either of such events, this agreement shall be deemed terminated and at an end by the parties hereto; and that after notice of termination of this agreement, and after it is terminated, no matter what the cause or manner of termination may be, neither this agreement, nor the fact that the Eastman Company has entered into or acted under it shall be used in any manner, directly or indirectly, by or for the Patents Company, its successors, assigns, or legal representatives, or by or for others, against the Eastman Company, or its successors or legal representatives, in any litigation, controversy or proceeding involving it or them, or any other persons, firms or corporations, or in any other way—it being understood and agreed that upon such termination the positions and rights of the Patents Company and the Eastman Company shall be the same as if this agreement had not been made; provided, however, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any breach or other violation of this agreement by the other occurring prior to such termination.

29. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that all notices provided for in this agreement shall be in writing and shall be given by delivering the same to an officer of the Patents Company or the Eastman Company, as the case may be, or by depositing such notice, postage prepaid, in any Post Office of the United States in a sealed envelope, directed to the Patents Company or the Eastman Company, as the case may be, at its last known Post Office address, to be forwarded by registered mail.

30. It is mutually covenanted and agreed by and between the Patents Company and the Eastman Company that this agreement shall bind and inure to the benefit of the Patents Company, its successors, assigns and legal representatives, and the Eastman Company and its successors as defined in Paragraph 10 of this agreement.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed by their officers duly authorized

1 to perform these acts, the day and year first above written.

Attest

Alice K. Whitney  
Asst. Secretary.

[SEAL.]

Witnesses to signature of

Geo. Eastman

Frank M. Crouch,  
Jack L. Inham

2

EASTMAN KODAK CO.

By Geo. Eastman, Treas.

MOTION PICTURE PATENTS CO.

By Frank L. Dyer,  
President.

Attest

George F. Scull  
Secretary.

[SEAL.]

3

### SCHEDULE A.

1. AGREEMENT made this first day of January, 1909,  
by and between MOTION PICTURE PATENTS COMPANY,  
a corporation organized and existing under the laws of the  
State of New Jersey and having an office at Jersey City, in  
said State, party of the first part (hereinafter referred to as  
the PATENTS COMPANY) ; the EDISON MANUFACTUR-  
ING COMPANY, a corporation organized and existing under  
the laws of the State of New Jersey and having an office at  
4 Orange, in said State, party of the second part (hereinafter  
referred to as the EDISON COMPANY), and the EAST-  
MAN KODAK COMPANY, a corporation organized and ex-  
isting under the laws of the State of New York and having a  
place of business at the City of Rochester, in said State,  
party of the third part (hereinafter referred to as the EAST-  
MAN COMPANY), WITNESSETH :

2. WHEREAS, the Patents Company represents that it  
is organized to own, deal in and grant licenses under letters  
patent pertaining to the motion picture art, and that it is the

owner of all the right, title and interest in and to United States Letters Patent: 1

- No. 578,185, dated March 2, 1897, for Vitascope, granted Thomas Armat; 1
- No. 580,749, dated April 13, 1897, for Vitascope, granted Thomas Armat;
- No. 586,953, dated July 20, 1897, for Phantascope, granted Charles F. Jenkins and Thomas Armat;
- No. 588,916, dated August 24, 1897, for Kinetoscope, granted Charles M. Campbell as assignee of Willard G. Steward and Ellis F. Frost; 2
- No. 629,063, dated July 18, 1899, for Kinetoscopic Camera, granted American Mutoscope Company as assignee of Herman Casler;
- No. 673,329, dated April 30, 1901, for Kinetoscope, granted The American Vitagraph Company as assignee of Albert E. Smith;
- No. 673,992, dated May 14, 1901, for Vitascope, granted Thomas Armat;
- No. 707,934, dated August 26, 1902, for Projecting Kinetoscope, granted E. & H. T. Anthony as assignees of Woodville Latham; 3
- No. 722,382, dated March 10, 1903, for Animated Picture Apparatus, granted to American Mutoscope & Biograph Company as assignee of John A. Pross;
- No. 744,251, dated November 17, 1903, for Kinetoscope, granted Albert E. Smith;
- No. 770,937, dated September 27, 1904, for Kinetoscope, granted The Vitagraph Company of America as assignee of Albert E. Smith;
- No. 771,280, dated October 4, 1904, for Winding Reel, granted Albert E. Smith; 4
- No. 785,205, dated March 21, 1905, for Flame-Shield for Kinetoscopes, granted The Vitagraph Company of America as assignee of William Ellwood, and
- No. 785,237, dated March 21, 1905, for Film-Holder for Kinetoscopes, granted The Vitagraph Company of America as assignee of Albert E. Smith;

all of which said letters patent relate to improvements in the motion picture art, and that there are no outstanding



1 licenses, shop rights, or other rights under said letters patent, or either of them, except a license for Parlor Kinetoscopes under letters patent Nos. 578,185, 580,749, 586,953, and 673,992, and certain alleged licenses under U. S. letters patent No. 586,953, which are in dispute, and excepting a license granted by the American Mutoscope & Biograph Company to the firm of Marvin and Casler to manufacture and sell cameras and exhibiting or projecting machines under letters patent owned by it (some of which are hereinbefore referred to) for use in foreign countries only, and excepting  
 2 certain licenses granted by the Armat Motion Picture Company to the American Mutoscope & Biograph Company under letters patent Nos. 578,185, 580,749, 586,953, 588,916 and 673,992, and by the latter Company to the former Company under letters patent Nos. 707,934 and 722,382, which licenses, however, are by agreement between said parties, suspended and are not to be acted upon until the Patents Company becomes bankrupt, ceases doing business or shall be dissolved, voluntarily or otherwise, or its Charter shall be repealed; and

3 3. WHEREAS, the Patents Company further represents that it is the owner of all the right, title and interest in and to reissued letters patent of the United States No. 12,037, dated September 30, 1902, and No. 12,192, dated January 12, 1904, the original letters patent whereof are No. 589,168 and dated August 31, 1897, and that there are no outstanding  
 4 licenses, shop rights or other rights under said reissued letters patent, or either of them, except license agreements thereunder between the Edison Company and Pathe Freres, a corporation organized and existing under the laws of the State of New Jersey and having an office at Jersey City, in said State, dated May 20, 1908, (which went into effect June 20, 1908), and between the Edison Company and the Kalem Company, of New York; the Essanay Company, of Chicago, Illinois; Siegmund Lubin, of Philadelphia, Pennsylvania; George Melies Company, of said Chicago; the Selig Polyscope Company, of said Chicago, and The Vitagraph Company of America, of New York, all dated January 31, 1908; and

4. WHEREAS, the Patents Company further represents that it has licensed each of the parties to the license agree-

ments mentioned in Paragraph 3, including the Edison Com-  
 pany, (with the exception of said George Melies Company)  
 and also the American Mutoscope & Biograph Company, of  
 New York, and George Kleine, of Chicago, Illinois, by agree-  
 ments in writing to take effect January 1st, 1909, to manu-  
 facture and use in the United States, its territories and pos-  
 sessions (hereinafter referred to as the "territory aforesaid")  
 cameras or apparatus embodying the inventions of said re-  
 issued letters patent No. 12,037 and letters patent Nos. 629,063  
 and 707,934, and to manufacture, print and produce positive  
 motion pictures embodying the inventions of said reissued  
 letters patent No. 12,192, and to lease the same in the United  
 States, its territories, dependencies and possessions (with  
 the exception of its insular possessions and Alaska, therein  
 referred to as the "lease territory") on film of a greater  
 width than approximately one (1) inch, upon condition that  
 they be used solely in exhibiting or projecting machines li-  
 censed by the Patents Company for the use of which a roy-  
 alty or rent is paid by the user thereof while in use contain-  
 ing the inventions, or some of them, of said letters patent  
 Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992,  
 707,934, 722,382, 744,251, 770,937, 771,280, 785,205, and  
 785,237, and to sell positive motion pictures containing the  
 inventions of said reissued letters patent number 12,192, on  
 film of a width approximately one (1) inch or less in said  
 "lease territory," and on film of any width in and for said  
 insular possessions and Alaska and foreign countries, all of  
 which license agreements are upon substantially the same  
 terms and conditions, except that the Edison Company is  
 not to pay any royalties to the Patents Company, and except  
 that George Kleine is prevented from manufacturing nega-  
 tive motion pictures in the "territory aforesaid" and from  
 manufacturing from imported negative motion pictures, posi-  
 tive motion pictures, and importing in all more positive mo-  
 tion pictures than a certain number of thousand feet per  
 week; and that the Patents Company may hereafter have  
 other licensees (said licensees which it now has or may here-  
 after have being referred to hereinafter, for brevity, as the  
 "Patents Company licensees"); and that in case the Patents  
 Company should become bankrupt, cease doing business or  
 should be dissolved, voluntarily or otherwise, or its Charter  
 should be repealed, then, on the happening of either of such  
 events, the Patents Company is to forthwith assign to the

- 1 Edison Company, its successors and assigns, the entire right,  
title and interest in and to said reissued letters patent Nos.  
12,037 and 12,192, and the inventions therein set forth, to-  
gether with all claims and demands, both at law and in  
equity, for infringement of said reissued letters patent, or  
either of them, and also on the happening of either of such  
events, all of the said license agreements hereinbefore re-  
ferred to in this paragraph are to forthwith terminate and  
be at an end; and that the license agreements of the parties  
referred to in Paragraph 3 have been suspended, except that  
any one of them is to terminate on the termination of the
- 2 hereinbefore mentioned agreement between the same party  
as licensee and the Patents Company, before the happening  
of either of such events, and forthwith and simultaneously  
with the happening of either of such events (if before Au-  
gust 31, 1914), all of said license agreements referred to in  
Paragraph 3, that have not been so terminated, shall be and  
become of full force and effect, subject to continuation and  
termination thereof as therein provided; and

- 3 5. WHEREAS, the Patents Company further represents  
that in and by the license agreements aforesaid with it, the  
licensees named therein are entitled to receive from the Pat-  
ents Company a share of twenty-four (24) per cent of the  
annual gross royalties or rents collected by or paid to the  
Patents Company for the use of all exhibiting or projecting  
machines containing any of the inventions described and  
claimed in the letters patent referred to in Paragraph 4,  
which twenty-four (24) per cent of said annual gross roy-  
alties or rents shall be paid to the Eastman Company and the  
shares thereof to which said licensees are entitled shall be  
apportioned to and paid to such licensees by the Eastman
- 4 Company as hereinafter provided; and

6. WHEREAS, the Patents Company further represents  
that in and by the license agreements aforesaid with it the  
licensees named therein are each obligated to use exclusively  
in the manufacture, in the "territory aforesaid," of motion  
pictures made on translucent or transparent sensitized film,  
designated in said agreements as "Licensed Film" manufac-  
tured and sold by a film manufacturer or manufacturers un-  
der an agreement in writing with the Patents Company;  
each of said license agreements further providing for the col-



lection from the licensee named therein by such manufac- 1  
 turer or manufacturers of the following royalty or royalties  
 for such "Licensed Film" of a width approximately one inch  
 and three-eighths of an inch ( $1\frac{3}{8}$  in.) purchased by said  
 licensee during the year preceding June 20th, 1909, and dur-  
 ing any year, counting from June 20th, 1909, during the con-  
 tinuance of the license agreement, and up to August 31, 1914,  
 that is to say:— If such shipments of such "Licensed Film"  
 to the licensee, on the orders of such licensee, for any such  
 year, be four million running feet or less, a royalty of one-  
 half ( $\frac{1}{2}$ ) cent per running foot on the total number of run-  
 ning feet for that year; if such shipments, on the orders of 2  
 such licensee, of such "Licensed Film," for any such year,  
 exceed four million running feet, but do not exceed six mil-  
 lion running feet, a royalty of four and one-half ( $4\frac{1}{2}$ ) mills  
 per running foot on the total number of running feet for  
 that year; if such shipments, on the orders of such licensee,  
 of such "Licensed Film," for any such year, exceed six mil-  
 lion running feet, but do not exceed eight million running  
 feet, a royalty of four (4) mills per running foot on the  
 total number of running feet for that year; if such ship-  
 ments, on the orders of such licensee, of such "Licensed  
 Film," for any such year, exceed eight million running feet 3  
 but do not exceed ten million running feet, a royalty of three  
 and three-quarter ( $3\frac{3}{4}$ ) mills per running foot on the total  
 number of running feet for that year; and if such shipments,  
 on the orders of such licensee, of such "Licensed Film," for  
 any such year, exceed ten million running feet, a royalty of  
 three and one-quarter ( $3\frac{1}{4}$ ) mills per running foot for the  
 total number of running feet for that year. And for "Li-  
 censed Film" narrower or wider than approximately one  
 inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) or thirty-five (35)  
 millimeters, the above mentioned royalties shall be reduced 4  
 or increased in proportion to the reduction or increase in  
 width of such narrower or wider "Licensed Film" below or  
 above the width of such "Licensed Film" of a width approxi-  
 mately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.); and

7. WHEREAS, the Eastman Company represents that  
 it has heretofore manufactured by secret processes and  
 embodying secret compositions and patented invention at  
 said City of Rochester, State of New York, sensitized trans-  
 lucent or transparent film (having a nitrocellulose base)

1 suitable for use in the commercial manufacture, printing  
and production of negative and positive motion pictures,  
and has sold the same in the "territory aforesaid" and  
in foreign countries, the parties to the license agreements  
mentioned in Paragraph 3 having been some of its customers  
therefor, and that it has special facilities for the manu-  
facture of such film; and

2 8. WHEREAS, the Edison Company, not being a manu-  
facturer of translucent or transparent sensitized film suit-  
able for use in the manufacture, printing or production  
of motion pictures, entered into two agreements in writing  
with the Eastman Company bearing date on or about the  
20th day of May, 1908, respecting the manufacture of such  
film, and the supplying of the same to said Edison Com-  
pany and to the licensees of the license agreements with  
the Edison Company mentioned in said Paragraph 3, and  
the collecting from such parties and the payment by it to  
the Edison Company of certain royalties upon such film;  
and

3 9. WHEREAS, the Edison Company and the Eastman  
Company are desirous of terminating and cancelling said  
two agreements in writing, and the Patents Company not  
being a manufacturer of translucent or transparent sensi-  
tized film suitable for use in the manufacture, printing or  
production of motion pictures, is desirous of availing  
itself of the manufacturing facilities therefor of the East-  
man Company by having it manufacture such film (having  
a nitrocellulose base) by its present secret processes and  
embodying its present secret compositions and patented  
invention and supply such film to the "Patents Company  
4 licensees," and is also desirous of having the Eastman  
Company collect from the latter, for payment to the Pat-  
ents Company, the royalties referred to in Paragraph 4  
of this agreement, and to collect from the other persons,  
firms and corporations, as provided for in Paragraph 14,  
for payment to the Patents Company, the royalties provided  
for in Paragraph 17;

NOW THEREFORE, the parties hereto, for and in  
consideration of the sum of one dollar to each paid by  
the other, the receipt of which is hereby acknowledged, and

for other good and valuable considerations from each to the other moving, including the covenants and agreements hereinafter entered into by them, do covenant and agree as follows:—

10. The Patents Company hereby grants to the Eastman Company, and the latter accepts, for the term and subject to the covenants, conditions and stipulations hereinafter expressed, the sole and exclusive right and authority, for the "territory aforesaid," to manufacture the "Licensed Film" aforesaid, and also such other translucent or transparent sensitized film suitable for the production commercially of positive and negative motion pictures, and sell such "Licensed Film" to the "Patents Company licensees," and such other film to other persons, firms and corporations as provided for in Paragraph 14, the right and authority hereby granted to the Eastman Company being sole and exclusive, even as to the Patents Company, in the "territory aforesaid," but, except as hereinafter provided, strictly limited to the manufacture of such "Licensed Film" and such other film and the sale of such "Licensed Film" to the "Patents Company licensees," and the sale of such other film to said other persons, firms and corporations, and not including any right to the Eastman Company to manufacture, use or sell, in the "territory aforesaid," motion picture cameras embodying any invention covered by said reissued patent No. 12,037 and said letters patent Nos. 629,063 and 707,934, except that the Eastman Company may and is hereby given the right to use such motion picture cameras as it may desire for its own use, including film testing; and it being further provided that the right and authority hereby granted is personal to, and not assignable or otherwise transferable in whole or in part, by the Eastman Company, which shall have no right to delegate any part thereof, or grant any right or privilege whatsoever thereunder or under either of said reissued letters patent No. 12,037 and 12,192, and letters patent Nos. 629,063 and 707,934, to any person, firm or corporation, unless the said Eastman Company should dispose of its entire motion picture film business to a single purchaser, in which case it may assign the right and authority hereby granted to it, together with all its rights under this agreement, to such purchaser, who shall



1 then and thereafter be recognized and dealt with by the Patents Company as the successor of the Eastman Company in the ownership of said right and authority and all other rights of the Eastman Company under this agreement and be entitled to all the benefits and privileges thereof; but before any such purchaser shall be recognized as such assignee and successor of the Eastman Company, said purchaser shall first agree in writing to accept, act under, and perform the covenants, stipulations and conditions of this agreement.

2 11. The Patents Company covenants and agrees to promptly notify the Eastman Company of the names and addresses of all the "Patents Company licensees" to whom it has granted or may hereafter grant licenses, and of the dates when their license agreements take effect, in order that the Eastman Company may be advised as to whom it is to sell the "Licensed Film" aforesaid, and also be able to compute the royalty referred to in Paragraph 6, and also covenants and agrees to promptly notify the Eastman Company of the revocation, cancellation or termination  
3 otherwise of any license agreements with the "Patents Company licensees" so that the Eastman Company may know that such license agreements have been terminated and discontinue the sale of such "Licensed Film" to such persons, firms and corporations named therein; it being understood that when any such license is so terminated, the licensee named therein shall cease to be one of the "Patents Company licensees" and that the Eastman Company shall, immediately upon being so notified of the fact, discontinue the sale of such "Licensed Film" to such licensee.

4 12. The Patents Company further authorizes and empowers the Eastman Company to charge to and collect from each of the "Patents Company licensees" to whom the Eastman Company supplies such "Licensed Film," and pay over to it (said Patents Company), in the manner hereinafter provided for, the royalties referred to in Paragraph 6 of this agreement.

13. The Patents Company, for itself, its successors, assigns and legal representatives, hereby releases, acquits and

discharges the Eastman Company from any and all claims, demands and liability for profits and damages because of any infringement by the Eastman Company of said letters patent Nos. 629,063 and 707,934, or either of them, or the use of the inventions covered thereby prior to the date hereof. 1

14. The Eastman Company covenants and agrees that during the continuance of this agreement it will fill all orders for the "Licensed Film" aforesaid received by it from the "Patents Company licensees" with reasonable diligence and at the prices hereinafter provided for, if it is satisfied that they are and will be able to pay for the same, and will manufacture all such "Licensed Film" (having a nitrocellulose base), by its present secret processes and will embody therein its present secret compositions and patented invention, and that it will not, after the date hereof, and during the continuance of this agreement knowingly furnish or sell, in the "territory aforesaid," except for export, as hereinafter provided for, such sensitized film for the commercial productoin of negative and positive motion pictures to anyone but the "Patents Company licensees," except to the extent of two and one-half ( $2\frac{1}{2}$ ) percent of the total amount of such "Licensed Film" supplied to the parties to the license agreements referred to in Paragraph 3 and prior to the date hereof and to the "Patents Company licensees" from the date hereof to June 20, 1909, and to said "Patents Company licensees" during any one year, counting from June 20, 1909, of the continuance of this agreement, which amount, of a width approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) the Eastman Company has furnished prior to the date hereof by and with the authority of the Edison Company, and from the date hereof the Eastman Company (by and with the consent and authority of the Patents Company, which it hereby grants) reserves the right to furnish or supply to persons not engaged in the business of manufacturing, selling, loaning, renting out or otherwise disposing of or dealing in motion pictures in the "territory aforesaid," and with the further exception that the Eastman Company (by and with the consent and authority of the Patents Company, which it hereby grants) reserves the right to manufacture and sell such translucent or transparent sensi- 2 3 4

- 1 tized film suitable for the commercial production of negative and positive motion pictures of a width not to exceed approximately one (1) inch in the "territory aforesaid" to persons, firms and corporations engaged in the business of manufacturing, selling, loaning, renting out or otherwise disposing of or dealing in motion pictures in the "territory aforesaid" upon condition, however, that in case any of them produces thereon any picture greater in size than approximately three-quarters ( $\frac{3}{4}$ ) of an inch, on a line either parallel to or at right angles to the edge of said film, and the Eastman Company has knowledge
- 2 thereof, it will cease supplying such film to any such person, firm or corporation; and with the further express exception that the Eastman Company (by and with the consent and authority of the Patents Company, which it hereby grants) reserves the right to manufacture and sell, in the "territory aforesaid," such translucent or transparent sensitized film suitable for the commercial production of negative and positive motion pictures of any width to persons, firms and corporations (not "Patents Company licensees") now having an established business of manufacturing motion pictures in any country foreign to the
- 3 United States (hereinafter, for brevity, called "foreign manufacturers"), who now manufacture negative or positive motion pictures in the United States, or who may, after the date of this agreement, commence the manufacture of negative and positive motion pictures in the United States.

15. The Eastman Company further covenants and agrees that it will mark conspicuously on each box or package containing such "Licensed Film," supplied by it to the
- 4 "Patents Company licensees," the following words and figures:

#### "LICENSED FILM.

Licensed for Use Only by Licensees

of the

MOTION PICTURE PATENTS COMPANY."

16. It is mutually covenanted and agreed by and be-



between the Patents Company and the Eastman Company  
 that the maximum prices to be charged by the Eastman  
 Company to the "Patents Company licensees" during the  
 continuance of this agreement shall be three cents net per  
 running foot for non-perforated "Licensed Film" (having  
 a nitrocellulose base) approximately one inch and three-  
 eighths of an inch ( $1\frac{3}{8}$  in.) in width, and three and one-  
 quarter ( $3\frac{1}{4}$ ) cents net per running foot for perforated  
 "Licensed Film" (having a nitrocellulose base) approxi-  
 mately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.)  
 in width (which prices shall be reduced or increased in  
 proportion to the reduction or increase in width of nar-  
 rower or wider "Licensed Film" than that approximately  
 one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width)  
 plus the royalties referred to in Paragraph 6 of this agree-  
 ment, which are to be charged to the "Patents Company  
 licensees" (except to the Edison Company); it being fur-  
 ther covenanted and agreed, however, that the Eastman  
 Company may reduce these prices of three (3) and three and  
 one-quarter ( $3\frac{1}{4}$ ) cents, respectively, if it should consider it  
 commercially desirable to do so, but in no case shall it  
 reduce the aforesaid royalties to be charged to and col-  
 lected by it from the "Patents Company licensees" for the  
 Patents Company, without the consent of the latter.

17. It is further mutually covenanted and agreed by  
 and between the Patents Company and the Eastman Com-  
 pany that the royalties referred to in Paragraph 6 of this  
 agreement shall not be charged by the Eastman Company  
 to the Edison Company, but that the maximum prices to  
 be charged by the Eastman Company to said Edison Com-  
 pany shall be (unless reduced as provided for in Paragraph  
 16, when the Edison Company shall have the benefit of  
 such reduced price) three (3) cents net per running foot  
 for non-perforated "Licensed Film" (having a nitrocellu-  
 lose base) approximately one inch and three-eighths of an  
 inch ( $1\frac{3}{8}$  in.) in width, and three and one-quarter ( $3\frac{1}{4}$ )  
 cents net per running foot for perforated "Licensed Film"  
 (having a nitrocellulose base) approximately one inch and  
 three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, which prices  
 shall be reduced or increased in proportion to the reduc-  
 tion or increase in width of narrower or wider "Licensed

- 1 Film" than that approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width.

18. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company, that on each sale of "Licensed Film" to the "Patents Company licensees" (with the exception of the Edison Company), the Eastman Company shall, in the first instance, that is to say, when such "Licensed Film" approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, is billed and shipped by it, charge the licensees with its price of three (3) cents or three and one-quarter ( $3\frac{1}{4}$ ) cents, as the case may be, per running foot, plus the maximum royalty of five (5) mills per running foot, referred to in Paragraph 6 of this agreement, and on the expiration of each year, counting from June 20, 1909, shall adjust the royalty account of each licensee as to "Licensed Film" so billed and shipped to them and paid for by them, according to the royalty schedule set forth in said Paragraph 6, returning to the licensee any amount such licensee may have overpaid, according to said schedule, and paying the balance to the Patents Company; and that on each sale of the other film of a width approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width to the amount of two and one-half ( $2\frac{1}{2}$ ) percent of the total amount of "Licensed Film" supplied to the "Patents Company licensees" during any one year, counting from June 20, 1909, of the continuance of this agreement, as provided for in Paragraph 14, a royalty of one-half ( $\frac{1}{2}$ ) cent per running foot, and which royalty the Eastman Company is to pay to the Patents Company on such film sold by it which is paid for by the purchaser thereof; and on each sale of said other film which is not to exceed approximately one inch (1 in.) in width, as provided for in Paragraph 14, the Eastman Company shall include in the price charged for such film to the purchaser thereof a royalty amounting to such proportion of one-half ( $\frac{1}{2}$ ) cent per running foot as the width of such film bears to the film approximately one and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and which royalty the Eastman Company is to pay to the Patents Company on such film sold by it which is paid for by the purchaser thereof; such adjustment and payments to the licensee and the

Patents Company to be made by the Eastman Company within thirty (30) days after the expiration of each such year, counting from June 20, 1909, provided, however, that if, at the time such payment of royalties is due from the Eastman Company to the Patents Company, the Edison Company should be indebted to the Eastman Company for "Licensed Film" or other supplies purchased from or furnished by the Eastman Company to the Edison Company during such year, the royalties shall be applied by it on account of such indebtedness, the balance, if any, remaining over such indebtedness, to be paid by the Eastman Company to the Patents Company, and a statement at the same time shall be given by the Eastman Company to the Patents Company of the amount of such indebtedness incurred after June 20, 1909, to which said royalties have been applied by it.

It is mutually covenanted and agreed by and between the Patents Company, the Edison Company and the Eastman Company, that all royalties heretofore paid to the Eastman Company by the licensees of the license agreements with the Edison Company referred to in Paragraph 3, between June 20, 1908, and the date hereof, under and in accordance with the aforesaid agreements between the Edison Company and the Eastman Company, referred to in Paragraph 8, and all royalties that may be paid to the Eastman Company by the "Patents Company licensees" between the date hereof and June 20, 1909, shall be adjusted in the same manner as provided for in this paragraph (except that the royalties that may be paid by the licensees George Kleine and the American Mutoscope & Biograph Company to the Eastman Company, for such period, shall be adjusted on the same basis as if each of said licensees had purchased "Licensed Film" from the Eastman Company at the same rate during the entire year preceding June 20, 1909, that such "Licensed Film" was billed and shipped to and paid for by each between the date hereof and June 20, 1909), and the amount which any such licensee may have overpaid, according to the royalty schedule in said Paragraph 6, shall be returned to the licensee so overpaying the same within thirty (30) days after June 20, 1909, and the balance remaining, together with the royalties that have been paid between June 20, 1908, and June 20, 1909, on each sale of film of a width



- 1 approximately one inch and three-eighths of an inch ( $1\frac{3}{8}$  in.) to the amount of two and one-half ( $2\frac{1}{2}$ ) percent of the total amount of "Licensed Film" supplied to the licensees of the license agreements with the Edison Company referred to in Paragraph 3, and to the "Patents Company licensees," and together with the royalty on the sale of other film not to exceed three-quarters ( $\frac{3}{4}$ ) of an inch in width prior to the date hereof under the said agreement between the Edison Company and the Eastman Company, referred to in Paragraph 8, and together with the royalty on the other film not to exceed approximately one (1) inch in width, received by it between the date hereof and June 20, 1909, as provided for in this paragraph, shall be paid to the Edison Company and the Patents Company as follows:
- 2

- 3 The said balance of all royalties received by it from the licensees of the license agreements with the Edison Company referred to in Paragraph 3, prior to the date hereof, and all the other aforesaid royalties received by it up to the date hereof, shall be paid to the Edison Company within thirty (30) days after June 20, 1909, provided, however, that if at that time the latter should be indebted to the former for "Licensed Film" or other supplies purchased from or furnished by the Eastman Company to the Edison Company, such royalties then in the possession of the Eastman Company shall be applied by it on account of such indebtedness, the balance, if any, remaining over such indebtedness, to be paid by the Eastman Company to the Edison Company; and the said balance of all royalties received by the Eastman Company from the "Patents Company licensees" between the date hereof and June 20, 1909, and all the other aforesaid royalties which have been received by it between said dates, shall be paid to the Patents Company within thirty (30) days after June 20, 1909, provided, however, that if at the time such payment of royalties is due from the Eastman Company to the Patents Company, the Edison Company should be indebted to the Eastman Company for "Licensed Film" or other supplies purchased from or furnished by the Eastman Company to the Edison Company between the date hereof and June 20, 1909, such royalties shall be applied by it on account of said indebtedness, the balance, if any, remaining over such indebtedness, to be paid by the Eastman Company to the
- 4

Patents Company, and a statement at the same time shall  
be given by the Eastman Company to the Patents Company  
of the amount of such indebtedness incurred between the  
date hereof and June 20, 1909, to which said royalties have  
been applied by it.

19. It is further mutually covenanted and agreed by  
and between the Patents Company and the Eastman Com-  
pany that in case any "foreign manufacturer" aforesaid  
has heretofore established or shall hereafter establish a  
business of manufacturing and selling positive or negative  
motion pictures in the United States, and shall be licensed  
by the Patents Company in and by a duly executed agree-  
ment in writing, the same in all substantial respects as  
the license agreements referred to in Paragraph 4, then,  
and from the time such license agreement goes into effect,  
and said Eastman Company is notified thereof in writing  
by the Patents Company, the Eastman Company shall  
charge to and collect from such licensee the royalties re-  
ferred to in Paragraph 6 of this agreement and pay the  
same to the Patents Company in the same manner as that  
provided for in Paragraph 18 respecting the charging to  
and collecting from the "Patents Company licensees" of  
royalties upon "Licensed Film" and paying the same to  
the Patents Company. But no royalty shall be charged to  
or collected from any "foreign manufacturers" for sensi-  
tized film sold to them by the Eastman Company unless and  
until they have been licensed by the Patents Company and  
the Eastman Company notified thereof as aforesaid.

20. The Eastman Company further covenants and agrees  
that it will keep an accurate account of all "Licensed Film"  
supplied by it to the "Patents Company licensees" and other  
film supplied to the other persons, firms and corporations  
as provided for in Paragraphs 14 and 18 (with the exception  
of the translucent or transparent sensitized film supplied to  
the "foreign manufacturers" unless and until such "foreign  
manufacturers" are licensed by the Patents Company and the  
Eastman Company is duly notified thereof as provided for in  
Paragraph 19) with the names and addresses of the pur-  
chasers and the date and amount of each purchase, and that  
with each yearly payment of royalty as hereinbefore provided  
for it will furnish the Patents Company with a statement in

1 writing, verified by an officer of the Eastman Company having  
 knowledge of the facts therein set forth (if the Patents Com-  
 2 pany shall so request) showing the total amounts in running  
 feet of such "Licensed Film" and other film, with the ex-  
 ceptions aforesaid, shipped by it to all the "Patents Com-  
 pany licensees" and such other persons, firms and corpora-  
 tions, and paid for by them, during the preceding year, but  
 it is further mutually covenanted and agreed that the deal-  
 ings between the Eastman Company and the "Patents Com-  
 2 pany licensees" shall, from the date hereof, and the deal-  
 ings prior to the date hereof between the Eastman Com-  
 pany and such of said licensees who are also licensees of the  
 license agreements with the Edison Company referred to in  
 Paragraph 3, insofar as the number of running feet or any-  
 thing that would tend to disclose the number of running feet  
 shipped to or ordered by them is concerned—be a matter of  
 confidence, even as to the exclusion of the Patents Company,  
 between such licensees and such other person, firm or cor-  
 poration, as aforesaid, and the Eastman Company, and the  
 latter shall not be at liberty to disclose, directly or indirectly,  
 3 to the Patents Company or to any of the "Patents Company  
 licensees" the number of such running feet of "Licensed  
 Film" and such other film as aforesaid, so ordered by or  
 shipped to any of the "Patents Company licensees", or such  
 other persons, firms and corporations as provided for in  
 Paragraphs 14 and 18; and it is therefore mutually cove-  
 nanted and agreed that all statements and payments of roy-  
 alty from the Eastman Company to the Patents Company shall  
 be in gross, without specifying the number of running feet  
 of "Licensed Film" or such other film, either by a state-  
 ment of the number of running feet or the amount of roy-  
 alties charged to and collected for or on account thereof.

4 21. It is further mutually covenanted and agreed by and  
 between the Patents Company and the Eastman Company,  
 that if, notwithstanding the statements made by the East-  
 man Company to the Patents Company, the latter should be  
 desirous of satisfying itself by having an examination made  
 of the books of account of the Eastman Company as to the  
 accuracy of the statements so made to it by the Eastman  
 Company, it may have such examination made of the books  
 of account of the Eastman Company (so far as the same  
 may relate to the sale by it of "Licensed Film" to the "Pat-



ents Company licensees" and such other film (with the exceptions hereinbefore provided for) to other persons, firms and corporations as provided for in Paragraph 14 and the "Patents Company licensees") by the public accountants, Price, Waterhouse & Company, of New York, N. Y., or any other public accountants that may hereafter be agreed upon by the Patents Company and the Eastman Company.

22. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that nothing herein contained shall interfere with or prevent the manufacture, sale or shipment by the Eastman Company of sensitized film suitable for the commercial production of negative or positive motion pictures, for export without the payment of any royalty or other consideration therefor to the Patents Company, when such film, addressed to the foreign purchaser, agent or consignee, is delivered to a vessel or to a transportation company for transportation to a foreign country, and not otherwise. The Eastman Company covenants and agrees that it will use all reasonable efforts to prevent the reimportation of any such film sold for export, into the United States in an unexposed condition, and that it will not sell any such film for export for the purpose of reimporting it into the United States in an unexposed condition.

23. The Patents Company further covenants and agrees that it will, during the continuance of this agreement, license such a number of persons, firms and corporations, under said letters patent Nos. 578,185, 580,749, 586,953, 588,916, 673,329, 673,992, 707,934, 722,382, 744,251, 770,937, 771,280, 785,205 and 785,237, to make and sell exhibiting or projecting machines containing the inventions described and claimed in the same, capable of exhibiting or projecting motion pictures on a film of width greater than approximately one (1) inch, and also such machines as will not be capable of exhibiting or projecting motion pictures on film of a greater width than approximately one (1) inch, as will be able to supply the demand for the same.

The Patents Company further covenants and agrees that it will not charge any such person, firm or corporation manufacturing and selling any such machine capable of exhibiting or projecting motion pictures on film of a greater width than approximately one (1) inch, more than Five (5) Dol-

- 1 lars as a license fee for the manufacture and sale of each such exhibiting or projecting machine, and that it will impose no other conditions or restrictions upon the manufacture and sale of any such machines than that the sale and purchase thereof gives only the right to use them solely for exhibiting or projecting motion pictures containing the inventions of said reissued letters patent No. 12,192, leased by one of the "Patents Company licensees" and upon payment of a royalty or rental to the Patents Company while in use, to be fixed by it, and while the letters patent under which they are licensed are owned or controlled by the Patents Company, and that there shall be attached to each such machine a plate, in a conspicuous place, showing plainly, not only the dates of the letters patent under which it is licensed, but also the aforesaid conditions and restrictions, and that such plate is not to be removed therefrom.

2 The Patents Company further covenants and agrees that it will not charge any person, firm or corporation making or selling any such machine capable of exhibiting or projecting motion pictures on film not wider than approximately one (1) inch, a license fee of more than Three (3) per cent of the net retail selling price of each such machine, and will impose no other conditions or restrictions upon the manufacture and sale of any such machines than that they be used solely for exhibiting or projecting motion pictures on film not wider than approximately one (1) inch in places where no admission fee is charged, and that there shall be attached to each such machine a plate, in a conspicuous place, showing plainly, not only the dates of the letters patent under which it is licensed, but also the aforesaid conditions and restrictions, and that such plate is not to be removed therefrom.

3 4 The Patents Company further covenants and agrees, however, that it will grant licenses to such a number of persons, firms and corporations to manufacture and sell exhibiting or projecting machines containing the inventions described and claimed in the aforesaid letters patent now owned by the Patents Company, capable of exhibiting or projecting, by reflected light, motion pictures on film of any width, but not capable of exhibiting or projecting the same by transmitted light, as will be able to supply the demand for the same, upon the payment of a royalty or license fee not to exceed Three (3) per cent of the net retail selling price of

each such machine, and that it will impose no other condition or restriction upon the manufacture and sale of any such machines than that they be used solely in places where no admission fee is charged, which condition shall appear on a plate to be attached to each such machine; and also that it will grant licenses to such persons, firms and corporations to manufacture and sell all such exhibiting or projecting machines referred to in this Paragraph 23, containing the inventions described and claimed in any letters patent that the Patents Company may hereafter own or control, subject to similar conditions or restrictions and upon the payment of additional license fees or royalties to be fixed by the Patents Company, the royalty or license fee, and all the conditions and restrictions of all the licenses referred to in this paragraph 23, to be the same for all such licensees, except that such licenses may be granted to said American Mutoscope & Biograph Company and the said Armat Motion Picture Company without payment of royalty or license fees for the manufacture or sale of any such exhibiting or projecting machines; and to said Vitagraph Company of America upon its paying only four-fifths ( $\frac{4}{5}$ ths) of the royalties or license fees provided for in this paragraph, on such machines, and to the Edison Company and said firm of Marvin and Casler, without paying any royalties or license fees on such machines sold *bona fide* for export.

The Patents Company further covenants and agrees that it will grant a license to the Eastman Company, upon its request, to manufacture and sell exhibiting or projecting machines containing the inventions described and claimed in the aforesaid letters patent now owned by the Patents Company capable of exhibiting or projecting by either transmitted or reflected light motion pictures on film not wider than approximately one (1) inch, upon the payment of a royalty or license fee not to exceed Three (3) per cent of the net retail selling price of each such machine, and that it will impose no other conditions or restrictions upon the manufacture and sale of any such machines than that they be used solely in places where no admission fee is charged, and that there be attached to each such machine a plate, in a conspicuous place, showing plainly, not only the dates of the letters patent under which it is licensed, but also said condition or restriction, and that such plate is not to be removed therefrom; and that it will also grant a license to



- 1 the Eastman Company to manufacture and sell such exhibiting or projecting machines containing the inventions described and claimed in any letters patent that the Patents Company may hereafter own or control, subject to similar conditions and restrictions, and upon the payment of additional license fees or royalties to be fixed by the Patents Company, the royalty or license fees and all the conditions and restrictions of all the licenses that may be granted by the Patents Company to manufacture and sell such exhibiting or projecting machines to be the same for the Eastman Company and all such licensees with the exceptions here-  
 2 inbefore referred to in this paragraph.

24. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that the Patents Company shall, within fifteen (15) days after June 20, 1909, pay to the Eastman Company twenty-four (24) percent of the gross royalties or rents collected by or paid to said Patents Company prior to June 20, 1909, for the use of exhibiting or projecting machines capable of exhibiting or projecting motion pictures on translucent or transparent film of a greater width than approximately one (1)  
 3 inch licensed by it, containing any of the inventions described and claimed in the letters patent referred to in Paragraph 4, and in any other letters patent hereafter owned or controlled by the Patents Company, and also twenty-four (24) percent of the gross royalties or rents collected by or paid to the Patents Company for the use of such machines during each year, counting from June 20, 1909, and within fifteen (15) days after the end of each such year, which shall be apportioned and paid to the "Patents Company licensees" as follows:

4 Each of such licensees shall have apportioned and paid to it by the Eastman Company, after each installation of said twenty-four (24) percent of said gross royalties is paid to the Eastman Company by the Patents Company, such a share thereof as the number of thousand feet of "Licensed Film" of a greater width than approximately one (1) inch ordered by and shipped to such licensee, added to the number of thousand running feet of film of a greater width than approximately one (1) inch, having positive motion pictures thereon, imported by such licensee (if such licensee has imported the same) during the period for which such install-

ment is paid to the Eastman Company, bears to the total number of thousand running feet of such "Licensed Film" ordered by and shipped to all of the "Patents Company licensees", added to the total number of running feet of film of a greater width than approximately one (1) inch having positive motion pictures thereon imported by all such licensees, during the period for which said installment is paid to the Eastman Company, after deducting the amount of such "Licensed Film" of a greater width than approximately one (1) inch ordered by and shipped to the Edison Company and the American Mutoscope & Biograph Company during the period for which such installment is paid to the Eastman Company, which two latter Companies are not to share in or be paid any part of said twenty-four (24) percent of the gross royalties or rents; that such apportionment shall be made as aforesaid through Price, Waterhouse & Company, chartered accountants, or through some other accountants that may hereafter be mutually agreed upon by and between the Eastman Company and the Patents Company, and the "Patents Company licensees", and the Eastman Company shall pay to the "Patents Company licensees" their respective shares of each installment of said twenty-four (24) percent of said gross royalties or rents provided for in this paragraph after receiving the same, and after the same have been so apportioned, without disclosing, directly or indirectly to the Patents Company or to any of the "Patents Company licensees" the share apportioned or paid to any of such licensees; that the Patents Company shall furnish to the Eastman Company the number of thousand running feet of film of a greater width than approximately one (1) inch having positive motion pictures thereon imported by all the "Patents Company licensees" during the period for which each said installment is paid to the Eastman Company, in order that the said apportionment may be made.

25. It is mutually covenanted and agreed by and between the Edison Company and the Eastman Company that the two agreements in writing entered into by and between them on or about the 20th day of May 1908, referred to in Paragraph 8, are hereby cancelled and terminated, and each of the said parties thereto hereby releases and discharges the other party thereto of and from all claims and demands that it has or

- 1 may have against the other under or arising out of each of said two agreements in writing.

26. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that this agreement shall take effect January 1st, 1909, and unless sooner terminated as hereinafter provided, shall continue until the expiration, on August 31, 1914, of the afore-said reissued letters patent No. 12,037 and 12,192; it being provided, however, that either party hereto shall have the right at any time to terminate this agreement by giving sixty (60) days notice in writing to the other party of its election so to do. Such termination of this agreement, however, shall not prejudice either party in the recovery of damages because of any breach, violation or non-performance thereof by the other.

27. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that in case the Patents Company should become bankrupt, cease doing business or should be dissolved, voluntarily or otherwise, or its charter should be repealed, the Patents Company shall immediately give notice of the same to the Eastman Company, and upon the happening of either of such events, this agreement shall be deemed terminated and at an end by the parties hereto; and that after notice of termination of this agreement by either party, as provided for in Paragraph 26, of this paragraph, and after it is terminated, no matter what the cause or manner of termination may be, neither this agreement, nor the fact that the Eastman Company has entered into or acted under it shall be used in any manner, directly or indirectly, by or for the Patents Company, its successors, assigns, or legal representatives, or by or for others, against the Eastman Company, its successors or legal representatives, in any litigation, controversy or proceeding involving it or them, or any other persons, firms or corporations, or in any other way—it being understood and agreed that upon such termination the positions and rights of the Patents Company and the Eastman Company shall be the same as if this agreement had not been made; provided, however, that the rights of neither party shall be prejudiced by such termination in the recovery of damages for any



breach or other violation of this agreement by the other occurring prior to such termination. 1

28. It is further mutually covenanted and agreed by and between the Patents Company and the Eastman Company that all notices provided for in this agreement shall be in writing and shall be given by delivering the same to an officer of the Patents Company or the Eastman Company, as the case may be, or by depositing such notice, postage prepaid, in any Post Office of the United States in a sealed envelope, directed to the Patents Company or the Eastman Company, as the case may be, at its last known Post Office address, to be forwarded by registered mail. 2

29. It is mutually covenanted and agreed by and between the Patents Company and the Eastman Company that this agreement shall bind and inure to the benefit of the Patents Company, its successors, assigns and legal representatives and the Eastman Company and its successors as defined in Paragraph 10 of this agreement.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers duly authorized to perform these acts, the day and year first above written. 3

MOTION PICTURE PATENTS COMPANY  
By Frank L. Dyer,  
President.

EDISON MANUFACTURING COMPANY  
By Frank L. Dyer,  
Vice President.

# SCHEDULE B. 4

THIS AGREEMENT made and entered into this 15th day of June, 1909, between EASTMAN KODAK COMPANY, a New York corporation, having a place of business in the City of Rochester, in said State, (hereinafter called the Vendor), and  
of (hereinafter called the Vendee), WITNESSETH THAT:

- 1 1. The Vendor, in consideration of the covenants and agreements hereinafter entered into by the Vendees, covenants and agrees as follows:

2 1a. To supply the Vendee with non-inflammable sensitized motion picture film both positive and negative, in such quantities as the Vendee may require, for the manufacture of positive and negative motion pictures for the Vendee's business in the same in the United States, on condition, however, that if the total amount of such film required by its several customers therefor in the United States and in countries foreign thereto should at any time exceed its output of such film, then and in such case the Vendee shall be entitled only to the same proportion of its output of such film as said Vendee had of its total output of sensitized motion picture film the previous calendar year.

3 1b. To supply such non-inflammable sensitized motion picture film to the Vendee, for the purpose aforesaid, in the usual motion picture width, namely, approximately thirty-five (35) millimetres or one and three-eighths ( $1\frac{3}{8}$ ) of an inch, and unperforated or perforated as the Vendee may require, at the following prices, f. o. b. at Rochester, N. Y.

	Unperforated	Perforated
4	3 1/3 cents per running foot;	3 3/4 cents per running foot;
	(plus the patent royalty of the MOTION PICTURE PATENTS COMPANY that may be collected by the Vendor for such Company, if and so long as the Vendor is to collect the same for such Company). All such film to be in standard motion picture length of two hundred feet and four hundred feet, or sixty metres and one hundred and twenty metres, except that the Vendor reserves the right to supply such film in shorter length of one hundred feet or over, or thirty metres or over, to the extent of five per cent. and no more, of the total amount of such film supplied to the Vendee.	

1c. Not to make any agreement between the date hereof and June 15th, 1912, with any person, firm or corporation to supply such person, firm or corporation, for any term beginning prior to June 15th, 1912, with its non-inflammable motion picture film perforated or unperforated and approximately thirty-five (35) millimetres in width, in countries foreign to the United States, at less than the following net

prices f. o. b. at the following places: London, England, one and three-fourths ( $1\frac{3}{4}$ ) pence per running foot; Paris, France, sixty (60) centimes per metre; Milan, Italy, sixty (60) centesime per metre; Berlin, Germany, fifty (50) pfennig per metre, and f. o. b. at other places in other foreign countries for as near similar prices as is practicable in the currency of such other foreign countries.

1d. Not to supply non-inflammable sensitized motion picture film to any person, firm or corporation for the manufacture of positive or negative motion pictures in the United States for less prices than those charged during the same time to the Vendee.

2. The Vendee in consideration of the covenants and agreements hereinbefore and hereinafter entered into by the Vendor, covenants and agrees as follows:—

2a. To purchase from the Vendor all the non-inflammable sensitized motion picture film both negative and positive required or used in the Vendee's business.

2b. To pay for all non-inflammable sensitized motion picture film supplied by the Vendor on delivery of the same or in such manner as may from time to time be prescribed by the Vendor.

2c. Not to manufacture or sell or be interested directly or indirectly in the manufacture or sale of, in the United States or elsewhere, any non-inflammable motion picture film whether sensitized or not, nor export from the United States any such film unless it has motion pictures developed thereon, (except sensitized negative film for the use of the Vendee's own operators), nor export to or import into nor use or sell or otherwise dispose of in the United States any such film, unless it has motion pictures developed thereon.

3. It is mutually covenanted and agreed by and between the Vendor and Vendee as follows:—

3a. That the Vendor shall not be responsible for damages for any failure to supply non-inflammable sensitized



1 motion picture film to the Vendee in quantities required by  
 the Vendee in the Vendee's aforesaid business, other than  
 the said Vendee's proportion of the Vendor's output of  
 the same as defined in paragraph 1a of this agreement,  
 or for any failure to supply such film in quantities required  
 by the Vendee in its aforesaid business, by circumstances  
 or happenings beyond the control of the Vendor.

2 3b. That in case the Vendor fails, and continues to fail  
 for a period of twenty (20) days, to supply its non-inflam-  
 mable sensitized motion picture film in the quantities re-  
 quired by the Vendee for the Vendee's aforesaid business,  
 the Vendee may purchase non-inflammable sensitized mo-  
 tion picture film from other manufacturers to complete the  
 Vendee's immediate requirements, month by month only,  
 until such time as the Vendor can supply said film. If,  
 however, the Vendor should fail for a continuous period  
 of one hundred and twenty (120) days to furnish its non-  
 inflammable sensitized motion picture film to the Vendee  
 in quantities required by the Vendee for the Vendee's afore-  
 said business (provided such quantities do not exceed  
 3 twenty-five (25) per cent. more than the Vendee has re-  
 ceived from the Vendor during a similar period imme-  
 diately preceding said one hundred and twenty (120)  
 days), then the Vendee shall have the right to terminate  
 this agreement by giving thirty (30) days' notice in writing  
 to the Vendor of its election so to do, which notice may  
 be given by delivering the same to an officer of the Vendor,  
 or by depositing such notice in any Post Office of the  
 United States in a sealed envelope directed to the Vendor  
 at its last known Post Office address.

4 3c. That the Vendor may reduce the prices provided for  
 in paragraphs 1b and 1c if it should consider it com-  
 mercially desirable to do so; but if the Vendor reduces the  
 prices provided for in paragraph 1b it may make a cor-  
 responding reduction of the prices provided for in para-  
 graph 1c, and if it reduces the prices provided for in para-  
 graph 1c it shall make a corresponding reduction of the  
 prices provided for in paragraph 1b.

3d. That the Vendee will not use the non-inflammable  
 sensitized motion picture film supplied by the Vendor  
 under this agreement in the production of negative or

positive motion pictures (or reproductions commonly known as "duplicates" of the negative or positive motion pictures) of any other manufacturer or person, firm or corporation located either in the United States or in any foreign country; and that the Vendor will not knowingly supply such film to persons, firms or corporations for the purpose of using such film in the business of making reproductions commonly known as "duplicates" of negative or positive motion pictures. 1

3e. That until the 15th day of September, 1909, the Vendee will not export or aid to enable other to export from the United States any non-inflammable positive motion picture film with motion pictures developed thereon; that until the 15th day of September, 1909, the Vendor will not supply any person, firm or corporation in countries foreign to the United States with non-inflammable motion picture film without an agreement with such person, firm or corporation in substance that the positive film so supplied shall be printed in such foreign countries, and, when developed, shall not be sold or otherwise disposed of or used in such foreign countries until after September 15, 1909; and further that if the Vendor should supply the Vendee with such film in foreign countries it shall be deemed to have been so supplied with a like agreement on the part of the Vendee. 2 3

3f. That by the expression non-inflammable motion picture film as used in this agreement, is meant transparent or translucent motion picture film having a cellulose acetate base instead of a nitrocellulose base, of a width approximately thirty-five (35) millimetres or one and three-eighths (1 $\frac{3}{8}$ ) of an inch.

3g. That this agreement is to continue until July 1st, 1912. 4

3h. That this agreement shall bind and inure to the benefit of the parties hereto and their and each of their successors, assigns or legal representatives.

IN WITNESS WHEREOF the parties hereto have executed this agreement the day and year first above written.

Witnesses:

1           Mr. GROSVENOR: I offer in evidence Petitioner's  
 Exhibit No. 135, being an agreement between  
 the Motion Picture Patents Company, Edison Manu-  
 facturing Company and Eastman Kodak Company  
 of February 14th, 1911.

### **Petitioner's Exhibit No. 135.**

2           1. AGREEMENT made this 14th day of February,  
 1911, by and between MOTION PICTURE PATENTS  
 COMPANY, a corporation organized and existing under  
 the laws of the State of New Jersey and having an office  
 at Jersey City, in said State, party of the first part  
 (hereinafter referred to as the Patents Company), The  
 Edison Manufacturing Company, a corporation organized  
 and existing under the laws of the State of New Jersey  
 and having an office at Orange, in said State, party of the  
 second part, (hereinafter referred to as the Edison Com-  
 3   pany), and Eastman Kodak Company, a corporation or-  
 ganized and existing under the laws of the State of New  
 York and having a place of business in the City of Roch-  
 4   ester, in said State, party of the third part (hereinafter  
 referred to as the Eastman Company); WITNESSETH:—

2. WHEREAS, an agreement in writing was entered  
 into on or about the first day of January, 1909, by and  
 between the parties of the first, second and third parts,  
 respecting, among other things, the sale by the party of  
 the third part, of translucent or transparent sensitized film  
 (having a nitrocellulose base) suitable for the commercial  
 production of negative and positive motion pictures, to  
 4   licensees of the party of the first part under certain pat-  
 ents owned by it, and to other persons, firms and corpo-  
 rations, which agreement in writing was modified in cer-  
 tain particulars by another agreement in writing entered  
 into by and between the parties hereto of the first and  
 third parts on or about the 15th day of June, 1909; and

3. WHEREAS, the parties hereto of the first, second  
 and third parts are desirous of further modifying the said  
 agreement in writing dated on or about the first day of  
 January, 1909;



4. NOW, the parties hereto of the first and third parts, for valuable and sufficient considerations each to the other moving, do hereby mutually covenant and agree to, and do hereby (with the consent and approval of the party of the second part) modify said agreement in writing dated on or about the first day of January, 1909, as follows:

By striking out the entire paragraph numbered 14 of said agreement in writing and substituting therefor the following as paragraph 14:

"14. The Eastman Company covenants and agrees that during the continuance of this agreement it will fill all orders for the "Licensed Film" aforesaid (having a nitro-cellulose base), received by it from any of the "Patents Company licensees" of an average quality equal to the average quality of such film heretofore supplied by it to its customers, with reasonable diligence and at the prices hereinafter provided for, if it is satisfied that they are and will be able to pay for the same; on condition, however, that if the total amount of sensitized motion picture film suitable for the commercial production of negative and positive motion pictures required by its several customers in the United States and in countries foreign thereto should at any time during the continuance of this agreement, exceed its output of such film, then and in such case each "Patents Company licensee" shall be entitled only to the same proportion of its output of such film that such licensee had of its total output of such film the previous calendar year; and that it will manufacture all such "Licensed Film" (having a nitrocellulose base), by its present secret processes, and will embody therein its present secret compositions and patented invention: Provided, however, that the party of the first part shall not be responsible for damages for any failure to fill all orders of any "Patents Company licensee" for such film in quantities other than such "Patents Company licensee's" proportion of the Eastman Company's output of the same, as defined in this paragraph, or for any failure to fill such orders in quantities required by any such "Patents Company licensee" by circumstances or happenings beyond the control of the Eastman Company. The Eastman Company further covenants and agrees that it will not, after the date

1 hereof, and during the continuance of this agreement,  
 knowingly furnish or sell, in the "territory aforesaid," ex-  
 cept for export, as hereinafter provided for, such sensi-  
 2 tized film for the commercial production of negative and  
 positive motion pictures to any one but the "Patents Com-  
 pany licensees," except to the extent of two and one-half  
 (2½) per cent. of the total amount of such "Licensed  
 Film" supplied to the parties to the license agreements re-  
 ferred to in paragraph 3, and prior to the date, January  
 1, 1909, and to the "Patents Company licensees" from  
 3 January 1, 1909, to June 20, 1909, and to said "Patents  
 Company licensees" during any one year, counting from  
 June 20, 1909, of the continuance of this agreement, which  
 amount, of a width approximately one and three eighths  
 of an inch (1⅜ in.), the Eastman Company has fur-  
 nished prior to the date hereof by and with the authority  
 of the Edison Company, and from the date hereof the  
 Eastman Company (by and with the consent and author-  
 ity of the Patents Company, which it hereby grants)  
 4 reserves the right to furnish or supply to persons not  
 engaged in the business of manufacturing, selling, loan-  
 ing, renting out, or otherwise disposing of or deal-  
 ing in motion pictures in the "territory aforesaid," and  
 upon which film, hereinafter referred to as "scientific film,"  
 the Eastman Company is to collect from the purchaser  
 thereof and pay to the Patents Company a royalty of one-  
 half cent (½ cent) per running foot on such film sold by  
 it which is paid for by the purchaser thereof, as provided  
 for in paragraph numbered 18 of this agreement; and  
 with the further exception that the Eastman Company (by  
 and with the consent and authority of the Patents Com-  
 pany, which it hereby grants) reserves the right to manu-  
 4 facture and sell such film to persons, firms and corporations  
 now engaged, or who may hereafter be engaged, in the busi-  
 ness of manufacturing, selling, loaning, renting out, or oth-  
 erwise disposing of or dealing in motion pictures in the "ter-  
 ritory aforesaid," who are not "Patents Company licensees,"  
 which persons, firms and corporations will be hereinafter  
 referred to as "non-licensed manufacturers aforesaid"; and  
 to others, i. e., persons, firms and corporations who sell such  
 film unexposed to "non-licensed manufacturers aforesaid"  
 in the "territory aforesaid"; but such film so sold to "non-  
 licensed manufacturers aforesaid" or to others who sell the

same to them shall not be considered as licensed by the Pat-  
 ents Company for use in the manufacture of motion pictures,  
 nor shall any royalty be charged, collected or accounted  
 therefor by the Eastman Company; that the Eastman Com-  
 pany shall, during the continuance of this agreement, from  
 the.....first.....day of.....June.....,  
 1911, give to the "Patents Company licensees" (who have  
 made or who may make an agreement with it, the same in  
 all substantial respects as the one hereto annexed marked  
 "Schedule A" and during the continuance of the same), a  
 discount of five percent (5%) off the prices provided for in  
 paragraph numbered 16 of this agreement (exclusive of the  
 royalties referred to therein) which will be hereinafter  
 termed "net prices"; and that it will not sell or knowingly  
 permit others to sell such film of its manufacture to the  
 "non-licensed manufacturers aforesaid" at less than the "net  
 prices" to the "Patents Company licensees" aforesaid, plus  
 one-half ( $\frac{1}{2}$ ) cent per running foot of such film; except to  
 such "non-licensed manufacturers aforesaid" who had, prior  
 to January 1st, 1909, an established place of business of  
 manufacturing motion pictures in any country foreign to the  
 United States (hereinafter, for brevity, called "foreign man-  
 ufacturers") who now manufacture negative or positive mo-  
 tion pictures in the United States, or who, after January  
 1st, 1909, commence the manufacture of negative or positive  
 motion pictures in the United States, the prices to whom  
 shall not be less than said "net prices," and without the ad-  
 dition thereto of one-half ( $\frac{1}{2}$ ) cent per running foot of such  
 film; but the Eastman Company may reduce these "net  
 prices" to the "Patents Company licensees," if it should con-  
 sider it commercially desirable to do so, and, if it does so, it  
 may make the same reduction to said "non-licensed manufac-  
 turers aforesaid." "

6. By striking out in paragraph numbered 18 of said  
 agreement, from lines 29 to 39, the following:

"And on each sale of said other film which is not to ex-  
 ceed approximately one (1) inch in width, as provided for  
 in paragraph 14, the Eastman Company shall include in the  
 price charged for such film to the purchaser thereof a roy-  
 alty amounting to such proportion of one-half ( $\frac{1}{2}$ ) cent per  
 running foot as the width of such film bears to the film ap-



- 1 proximately one and three-eighths of an inch ( $1\frac{3}{8}$  in.) in width, and which royalty the Eastman Company is to pay to the Patents Company on such film sold by it which is paid for by the purchaser thereof;"

7. By inserting in paragraph 20 of said agreement, after the words "other film," in lines 3 and 4 thereof, the words:

"hereinbefore referred to as 'scientific film'."

- 2 By striking out the ",", and the parenthesis and parenthetical clause following it, in lines 5 to 10 of said paragraph 20.

By striking out the words "with the exceptions afore-said" in line 18 of said paragraph 20, and inserting in lieu thereof the words—

"hereinbefore referred to as 'scientific film'."

- 3 8. By striking out, in paragraph 21 of said agreement, the words "other film (with the exceptions hereinbefore provided for)," in lines 11 and 12 thereof, and inserting in lieu thereof the words "scientific film."

9. That said above mentioned agreement entered into on or about the first day of January, 1909, as modified by the said agreement in writing entered into on or about the 15th day of June, 1909, and as altered and modified by this agreement, shall continue in full force and effect.

- 4 10. That the covenants and agreements herein contained shall bind and inure to the benefit of the Patents Company, its successors, assigns and legal representatives, and the Eastman Company, and its successors as defined in paragraph 10 of said agreement dated on or about January 1, 1909.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be executed by their officers duly

authorized to perform these acts, the day and year first above  
written. 1

MOTION PICTURE PATENTS CO.

By Frank L. Dyer,  
President.

Attest:

Wm. Pelzer,  
Secretary.

EDISON MANUFACTURING CO.

By Frank L. Dyer,  
Vice-President. 2

Witness:

Wm. Pelzer,

EASTMAN KODAK CO.

By Geo. Eastman,  
President.

Witness:

M. B. Philipp.

#### SCHEDULE A.

THIS AGREEMENT made and entered into this  
day of \_\_\_\_\_, 1911, between EASTMAN KODAK COM- 3  
PANY, a New York corporation having a place of business  
in the City of Rochester, in said State (hereinafter called  
the Vendor), and  
(hereinafter called the Vendee), WITNESSETH:

1. The Vendor, in consideration of the covenants and  
agreements hereinafter entered into by the Vendee, coven-  
ants and agrees as follows:

1a. To supply the Vendee with sensitized motion picture 4  
film, both positive and negative, having a nitro-cellulose  
base, and of an average quality equal to the average quality  
of such film heretofore supplied by it to its customers, in  
such quantities as the Vendee may require for the manu-  
facture of positive and negative motion pictures for the  
Vendee's business in the same in the United States, its  
territories, possessions and dependencies; on condition,  
however, that if the total amount of sensitized motion pic-  
ture film suitable for the commercial production of positive  
and negative motion pictures required by its several cus-

1 tomers therefor in the United States and in countries  
foreign thereto, should at any time exceed its output of  
such film, then, in such case, the Vendee shall be entitled  
only to the same proportion of its output of such sensitized  
motion picture film, having a nitrocellulose base, as said  
Vendee had of its total output of sensitized motion picture  
film the previous calendar year.

2 1b. To supply such sensitized motion picture film hav-  
ing a nitrocellulose base to the Vendee for the purpose  
aforesaid in the usual motion picture width, namely,  
3 approximately thirty-five (35) millimetres, or one and three-  
eighths of an inch ( $1\frac{3}{8}$  in.) and unperforated, f. o. b. at  
said Rochester, New York, at the price of three (3) cents  
per running foot, with a discount of five per cent. (5%)  
off (plus the patent royalty of the Motion Picture Patents  
Company that may be collected by the Vendor for such  
Company if and so long as the Vendor is to collect the same  
for such Company). All such film to be in standard motion  
picture lengths of two hundred feet and four hundred feet, or  
sixty metres and one hundred and twenty metres, except  
4 that the Vendor reserves the right to supply such film in  
shorter lengths of one hundred feet or over or thirty metres  
or over, to the extent of five per cent. (5%) and no more  
of the total amount of such film supplied to the Vendee.

1c. Not to supply its sensitized motion picture film hav-  
ing a nitrocellulose base, unperforated, and approximately  
thirty-five (35) millimetres in width, in countries foreign  
to the United States, at less than the following prices f. o. b.  
at the following places; Great Britain, one and forty-five  
one-hundredths (1 45-100) pence per running foot; France,  
5 fifty (50) centimes per running metre; Italy, fifty (50)  
centesimi per running metre; the German Empire, forty  
(40) pfennigs per running metre, and f. o. b. in other  
foreign countries for as near similar prices as practicable  
in the currency of such other foreign countries; with a  
discount of five per cent. (5%) off such prices; and not to  
supply sensitized motion picture film having a nitrocellulose  
base, perforated and approximately thirty-five (35) milli-  
metres in width, in countries foreign to the United States,  
at less than said prices for unperforated film, plus one fourth  
( $\frac{1}{4}$ th) cent per running foot, or the equivalent thereof as



near as practicable in the currency of such foreign countries, with said discount of five per cent (5%) off of such prices.

1d. Not to supply sensitized motion picture film having a nitrocellulose base to any person, firm or corporation for the manufacture of positive and negative motion pictures in the United States, its territories, possessions or dependencies for less prices (exclusive of the patent royalty aforesaid) than those charged during the same time to the Vendee.

2. The Vendee, in consideration of the covenants and agreements hereinbefore and hereinafter entered into by the Vendor, covenants and agrees as follows:

2a. To purchase from the Vendor all sensitized motion picture film, both positive and negative, required or used in the Vendee's business.

2b. To pay for all sensitized motion picture film supplied by the Vendor on delivery of the same, or in such manner as may from time to time be required by the Vendor.

2c. Not to manufacture or sell or be interested, directly or indirectly, in the manufacture or sale of, in the United States (except as hereinafter provided for in paragraph 3f), any motion picture film, whether sensitized or not, nor export from the United States any such film, unless it has motion pictures developed thereon (except sensitized negative film for the use of the Vendee's own operators) nor import into nor sell or otherwise dispose of in the United States any such film unless it has motion pictures developed thereon.

3. It is mutually covenanted and agreed by and between the Vendor and the Vendee as follows:

3a. That the Vendor shall not be responsible for damages for any failure to supply sensitized motion picture film, having a nitrocellulose base, to the Vendee in quantities required by the Vendee in the Vendee's aforesaid business, other than the said Vendee's proportion of the Vendor's output of sensitized motion picture film as defined in para-

1 graph numbered 1a of this agreement, or for any failure  
to supply such film, having a nitrocellulose base, in quan-  
tities required by the Vendee in the Vendee's aforesaid busi-  
ness, by circumstances or happenings beyond the control  
of the Vendor.

2 3b. That in case the Vendor fails and continues to fail  
for a period of twenty (20) days to supply its sensitized  
motion picture film, having a nitrocellulose base, in the  
quantities required by the Vendee for the Vendee's aforesaid  
business, then the Vendee may purchase such film from  
other manufacturers to complete the Vendee's immediate  
requirements, month by month only, until such time as  
the Vendor can supply said film. If, however, the Vendor  
should fail for a continuous period of one hundred and  
twenty (120) days to furnish its said film to the Vendee  
in the quantities required by the Vendee for the Vendee's  
aforesaid business (provided such quantities do not exceed  
25 per cent. more than the Vendee has received from the  
Vendor during a similar period immediately preceding said  
one hundred and twenty (120) days, then the Vendee shall  
3 have the right to terminate this agreement by giving thirty  
(30) days' notice in writing to the Vendor of its election  
so to do.

3c. That the Vendor may reduce the prices provided  
for in paragraphs 1b and 1c, if it should consider it com-  
mercially desirable to do so, but if the Vendor reduces the  
prices provided for in paragraph 1b it may make a cor-  
responding reduction in the prices provided for in para-  
graph 1c, and if it reduces the prices provided for in para-  
graph 1c it shall make a corresponding reduction of the  
prices provided for in paragraph 1b, except as provided for  
4 in paragraph 3d.

3d. That the Vendor is to have the privilege of selling  
in countries foreign to the United States such sensitized  
motion picture film, having a nitrocellulose base, in lengths  
less than one hundred (100) feet or thirty (30) metres,  
or such film inferior to the average quality heretofore sup-  
plied by it to its customers, for special purposes, at prices  
below those provided for in paragraph 1c, and without  
making a corresponding reduction of the prices provided

for in paragraph 1b; and the Vendor will supply the Vendee with such film of a shorter length than one hundred (100) feet or thirty (30) metres, or of an inferior quality, upon the same terms and for the same purposes as the Vendor may supply the same at the time to its customers in countries foreign to the United States, plus the patent royalty aforesaid if and so long as the Vendor is to collect the same for the Motion Picture Patents Company aforesaid.

3c. That the Vendee will not use the sensitized motion picture film, having a nitrocellulose base, supplied by the Vendor under this agreement in the production of positive or negative motion pictures (or reproductions commonly known as "dupes") of the negative or positive motion pictures of any other manufacturer or person, firm or corporation located either in the United States or in any foreign country; and that the Vendor will not knowingly supply such film to persons, firms or corporations for the purpose of using such film in the business of making such reproductions commonly known as "dupes" of positive or negative motion pictures.

3f. That in case, during the continuance of this agreement, the Vendee desires to use, in the Vendee's business, sensitized motion picture film, either positive or negative, specially prepared for the photography of objects in natural colors, and the Vendor is unable or unwilling to furnish such film to the Vendee upon the request of the Vendee to the Vendor for such film, on terms satisfactory to the Vendee, then the Vendee is to have the right to manufacture such film or to obtain such film from other manufacturers than the Vendor.

3g. That the Vendee shall, in the business of the Vendee for the United States, use solely, until June 1st, 1911, non-inflammable motion picture film, having a cellulose acetate base, under and in accordance with an agreement in writing entered into by the Vendor and Vendee on or about the 15th day of June, 1909, provided the Vendor supplies the same to the Vendee under said agreement of an average quality equal to the average quality of such film heretofore supplied to the Vendee by the Vendor; that the Vendor will supply such film to the Vendee at the prices provided



1 for in said agreement of June 15th, 1909, with a discount  
of five per cent. (5%) off such prices (exclusive of the  
patent royalty aforesaid), on all such film delivered to the  
Vendee by the Vendor between the date hereof and June  
1st, 1911, the price, however, for all such film after June  
1st, 1911, to be that provided for in said agreement of  
June 15th, 1909.

2 3h. That this agreement is to continue until July 1st,  
1912, and thereafter year by year unless either of the  
parties hereto at least sixty (60) days before the expira-  
tion of said original term or of any of said subsequent  
terms, notifies the other in writing of its election to ter-  
minate this agreement, in which case the same shall ter-  
minate at the end of the term in which such notice is given.

3 3i. That all notices provided for in this agreement shall  
be in writing, and shall be given by delivering the same  
to the Vendor or the Vendee, as the case may be, or by  
depositing such notice in any postoffice of the United States,  
in a sealed envelope, postage prepaid, directed to the  
Vendor or the Vendee, as the case may be, at the last  
known post office address of said Vendor or Vendee, as the  
case may be, to be forwarded by registered mail.

3j. That this agreement shall bind and inure to the  
benefit of the Vendor and its successors and assigns, and  
shall bind and inure to the benefit of the Vendee and the  
successors and assigns of the Vendee's said business in the  
manufacture of motion pictures.

4 IN WITNESS WHEREOF the parties hereto have ex-  
ecuted this agreement the day and year first above written.  
Witnesses:

Mr. GROSVENOR: I offer in evidence Petitioner's Exhibit No. 136, being an agreement between the Motion Picture Patents Company, Edison Manufacturing Company, and Biograph Company, of February 14th, 1911.

**Petitioner's Exhibit No. 136.**

1. THIS AGREEMENT, made this 14th day of February, 1911, by and between MOTION PICTURE PATENTS COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Jersey City, in said State, party of the first part, (hereinafter referred to as the Licensor); the EDISON MANUFACTURING COMPANY, a corporation organized and existing under the laws of the State of New Jersey, and having an office at Orange, in said State, party of the second part (hereinafter referred to as the Edison Company), and BIOGRAPH COMPANY of New York City, N. Y., party of the third part (hereinafter referred to as the Licensee), WITNESSETH:

2. WHEREAS, an agreement in writing was entered into on the 18th day of December, 1908, by and between the Licensor, the Edison Company and the Licensee; and

3. WHEREAS, the Licensor, the Edison Company and the Licensee desire to modify and alter said agreement of December 18, 1908, in certain particulars:

**NOW THIS AGREEMENT WITNESSETH:**

4. The Licensor, the Edison Company and the Licensee, for valuable and sufficient considerations, each to the other moving, do hereby mutually covenant and agree to, and do hereby, modify and alter said agreement of December 18, 1908, as follows:

5. By cancelling, and they do hereby cancel, the second clause of paragraph numbered 4 of said agreement of December 18, 1908, and do hereby substitute therefor the following:

1            "The Licensor further covenants and agrees that  
it will, in an agreement in writing with each manu-  
2            facturer of 'Licensed Film,' obligate such manu-  
facturer, so long as the latter has the exclusive right  
to make and sell such 'Licensed Film,' not to know-  
ingly furnish or sell, in the 'territory aforesaid,'  
except 'for export,' sensitized film, suitable for the  
commercial production of negative and positive  
motion pictures, to any one but the Licensee, and  
the additional licensees hereinafter provided for,  
except to the extent of  $2\frac{1}{2}\%$  of the total amount of  
3            such 'Licensed Film' supplied by such manufacturer  
to the parties to the license agreements referred to  
in paragraph (c) during the year preceding June 20,  
1909, and to the Licensee and the additional licensees  
hereinafter provided for, during any one year there-  
after during the continuance of such agreement,  
which amount such manufacturer shall have the  
right to furnish or sell, in the 'territory aforesaid,'  
to persons not engaged in the business of manufac-  
turing, leasing, selling, loaning, renting out, or other-  
wise disposing of or dealing in motion pictures in  
4            the 'territory aforesaid'; and with the further excep-  
tion that such manufacturer may also reserve the  
right to manufacture and sell sensitized film, having  
a cellulose acetate base, known as non-inflammable  
film, suitable for the commercial production of nega-  
tive and positive motion pictures, of a width not  
to exceed approximately one (1) inch, in the 'terri-  
tory aforesaid,' to persons, firms and corporations  
(who are not to be up to July 1, 1912, deemed 'non-  
licensed manufacturers' as hereinafter defined) en-  
gaged in the business of manufacturing, leasing, sell-  
ing, loaning, renting out or otherwise disposing of  
or dealing in motion pictures in the 'territory afore-  
said,' but upon the condition that in case any of  
them produces thereon any picture greater in size  
than approximately three-quarters ( $\frac{3}{4}$ ) of an inch  
on a line either parallel to or at right angles to the  
edge of such film, and such manufacturer has knowl-  
edge thereof, such manufacturer will cease supply-  
ing such film to any person, firm or corporation so  
doing; and with the further exception that such



1 manufacturer may also reserve the right to manu-  
 2 facture and sell in the 'territory aforesaid' such  
 non-inflammable film suitable for the commercial pro-  
 duction of negative and positive motion pictures of  
 any width, to persons, firms and corporations who  
 had, prior to January 1st, 1909, an established place  
 of business of manufacturing motion pictures in  
 any country foreign to the United States (herein-  
 after, for brevity, called 'foreign manufacturers')  
 who January 1st, 1909, manufactured negative or  
 positive motion pictures in the United States, or  
 who may after January 1st, 1909, commence the  
 manufacture of negative or positive motion pictures  
 in the United States; and with the further exception  
 that such manufacturer may also reserve the right  
 to manufacture and sell in the 'territory aforesaid'  
 sensitized film, having a nitrocellulose base, suitable  
 for the commercial production of negative and posi-  
 tive motion pictures of any width, up to July 1st,  
 1912, and on and after July 1st, 1912, such sensi-  
 tized motion picture film having either nitrocellulose  
 base, or a cellulose acetate base of any width, to  
 persons, firms and corporations not licensed by the  
 Patents Company under its aforesaid United States  
 letters patent (which persons, firms and corpora-  
 tions, including such 'foreign manufacturers,' will  
 be hereinafter referred to as 'non-licensed manufac-  
 turers aforesaid'), engaged in the business of manu-  
 facturing, leasing, selling, loaning, renting out, or  
 otherwise disposing of or dealing in motion pictures  
 in the 'territory aforesaid'; and to others, *i. e.*,  
 persons, firms and corporations who sell such film,  
 unexposed, to 'non-licensed manufacturers afore-  
 said'; but such motion picture film, so sold by such  
 manufacturer to such 'non-licensed manufacturers  
 aforesaid,' including such 'foreign manufacturers'  
 aforesaid, or to others who sell the same to them,  
 shall not be considered as 'Licensed Film,' nor shall  
 any royalty be charged, collected or accounted there-  
 for by such manufacturer."

6. That as hereby modified and altered, the said agree-  
 ment of December 18, 1908, shall remain in force and effect,

1 in the same manner as if the clause herein and hereby substituted for the second clause in said paragraph numbered 4 of said agreement of December 18, 1908, was in said agreement as originally executed.

IN WITNESS WHEREOF the parties hereto have executed this agreement, the day and year first above written.

BIOGRAPH COMPANY.

Witness:

By J. J. Kennedy,

Wm. Pelzer.

President.

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